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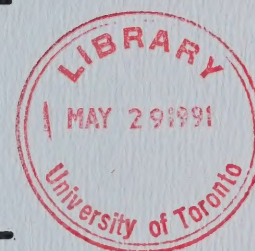
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ENVIRONMENTAL ASSESSMENT BOARD



VOLUME: 305

DATE: Tuesday, April 30, 1991

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

FARR
ASSOCIATES &
REPORTING INC.

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4

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A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416) 963-1249

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I N D E X O F P R O C E E D I N G S

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<u>DAVID CUMING,</u> <u>ANN BALMER</u> ; Sworn	54000
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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1795	Map of areas selected for harvest operations, 1990-95 and 1989-1990 for eight townships in the northern part of the Sault Ste. Marie District, at a scale of 1:50,000.	53997
1796	Witness statement of The Canadian Association of Professional Heritage Consultants. OFIA and MRN interrogatories re CAPHC and answers thereto.	54004
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1798	Letter dated September 19th, 1990 addressed to Mr. Richard Unterman, President of the Canadian Association of Professional Heritage Consultants signed by Robert Montgomery, Director of the Heritage Branch of the Ministry of Culture and Communications.	54071

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by the Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.

Hearing held at the offices of the Ontario
Highway Transport Board, Britannica Building,
151 Bloor Street West, 10th Floor, Toronto,
Ontario, on Tuesday, April 30th, 1991,
commencing at 9:00 a.m.

VOLUME 305

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
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MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
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MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
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MR. R. LINDGREN)	
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MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD		ONTARIO FEDERATION OF LABOUR

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MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1800	OFAH Interrogatory No. 2 and MNR Interrogatory Nos. 3, 6, 7, 8, 9, 12 and 13 re: FFT Panel No. 2.	54121
1801	2-page excerpt of MNR document entitled: Minor Amendment to an Approved Timber Management Plan, 1986-1991 Aulneau Timber Management Plan, Cash Lake amendment.	54144
1802	Five-page document consisting of a letter to the President of the Farlane Environmental Protection Association from the Honourable Ruth Grier dated March 12th, '91, and attached a response to the Minister's letter from the President of the Farlane Environmental Protection Association.	54172
1803	Document containing map showing AOCs by number and final area of concern prescriptions for blocks 9 and 10 of Aulneau Crown Management Unit 1986-91 timber management plan.	54203

1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning.

3 THE WITNESS: Good morning.

4 MS. SWENARCHUK: Good morning.

5 MADAM CHAIR: Please be seated.

6 Good morning, Dr. Henderson.

7 DR. HENDERSON: Good morning, Madam

8 Chair.

9 I'd like to, if I might, Madam Chair,
10 just to say that I'm very sorry that I couldn't appear
11 on December 12th and I apologize to the Board for that.

12 MADAM CHAIR: Well, we're happy you're
13 here and you look very well and thank you for coming.

14 THE WITNESS: Thank you.

15 MADAM CHAIR: Ms. Swenarchuk?

16 MS. SWENARCHUK: Good morning, Madam
17 Chair, Mr. Martel.

18 We'll be dealing this morning from Dr.
19 Henderson's witness statement which is Exhibit 1433 and
20 the supporting documents to that witness statement
21 which is in Panel 2 source book, Exhibit 1434, Tab 2.

22 Now, as well, Madam Chair, the Ministry
23 of Natural Resources prepared maps of the area in
24 question, one is posted there and another one for your
25 use. (handed)

1 MADAM CHAIR: Thank you.

2 MS. SWENARCHUK: Perhaps we could begin
3 by making that an exhibit.

4 MADAM CHAIR: Yes. This will be Exhibit
5 1799. Would you describe this map, Ms. Swenarchuk.

6 MS. SWENARCHUK: Dr. Henderson, would you
7 describe the map?

8 THE WITNESS: Yes, let me commence by --

9 MS. SWENARCHUK: Did you want to swear
10 the witness first, Madam Chair?

11 MADAM CHAIR: Yes, please.

12 MS. SWENARCHUK: Okay. I wasn't
13 expecting that question.

14 ROSS HENDERSON, Sworn

15 THE WITNESS: In answer to your question,
16 Madam Chairman, we're dealing with an area northeast of
17 Kenora and on this large scale map the Caution Lake
18 Road which runs just south of the CNR from Jones
19 westward towards Farlane is the area in which we're
20 which we're looking, and the map of block 10 and block
21 9 of the Aulneau District is the map in front of you
22 revealing, particularly with block 9 but to some extent
23 with block 10, and Cash Lake is shown at the left. My
24 cottage is on Cash Lake.

25 The white area with brown patches in the

1 middle is the cut area. The orange dotted area is a
2 no-cut reserve, and there's the winter road which runs
3 across Caribou Lake into block 9. Those are the areas
4 with which we're dealing.

5 Can you -- does that give you enough
6 description to follow?

7 MADAM CHAIR: Yes, Dr. Henderson.

8 DIRECT EXAMINATION BY MS. SWENARCHUK:

9 Q. Now, Dr. Henderson, I understand that
10 you are a professor of business administrative at the
11 University of Manitoba?

12 A. That's correct.

13 Q. And you hold a Masters of business
14 administrative from Harvard as well as a Ph.D. in
15 business from the University of Western Ontario and you
16 are also a professional engineer?

17 A. That is correct.

18 Q. And you currently reside in Winnipeg
19 but own cottage property on Cash Lake in the MNR
20 Aulneau District?

21 A. I do.

22 Q. Now, can you briefly describe for the
23 Board when and why your family acquired this property?

24 A. My father and mother acquired it in
25 1938 but rented it first in 1930 because of the

1 wilderness nature, the totally unspoiled nature.

2 Aside from the railroad running through
3 it there were portages, cottages which were very close
4 to nature and people paddled by canoe, in 1930 there
5 were no motor boats, and went to it for the -- my
6 father believed that his family should have exercise,
7 hard work outdoor, fresh air and felt that he could
8 give it to us in that location.

9 Q. And would you describe the cottage,
10 please?

11 A. Yes. The cottage is 20 feet by about
12 38 feet, it's formed of upright logs, there is a
13 veranda included in that space, a main room about 20 by
14 18, one bedroom and a small kitchen.

15 We have no electricity, we have no modern
16 conveniences of any sort, we use coal oil lamps. We do
17 have a fireplace, labour for which my brother and I did
18 at age 15 and 13 respectively, and I have two canoes,
19 one dating back to 1912 and one dating back to 1944.

20 It's a very simple kind of thing but I
21 enjoy it. I cut my wood with a Swede saw and chop it
22 with an axe for firewood, dead trees. The whole
23 cottage is very simple and I like it that way.

24 Q. Could you indicate on Exhibit 1799
25 the location of your cottage on Cash Lake, please?

1 A. Yes, certainly. It's -- there is a
2 black dot near the southeast side of Cash Lake marked
3 spring. Directly north of that spring by about half or
4 five eighths of an inch is a blue dot and my cottage is
5 located there, the blue dot is almost a square.

6 Can you spot that, Madam Chairman?

7 MADAM CHAIR: Yes, we can, Dr. Henderson.

8 MS. SWENARCHUK: Q. Okay. Now, is there
9 road access to the cottage?

10 A. There is not road access but there is
11 now a road that comes down the west side of Red Deer
12 from the north to within about two miles of the north
13 side of Cash Lake which we used for the first time last
14 year, a very rough road.

15 There is also the secondary road, I guess
16 it would be called, running from the Caution Lake Road
17 to the shore of Caribou Lake which can be driven on,
18 and then it's possible to cut through the bush,
19 although there's no path, to reach the railroad and
20 walk two miles along the railroad and then through the
21 bush.

22 Q. And what kinds of activities does
23 your family engage in at the cottage?

24 A. We engage in swimming, in canoeing,
25 in walking and observing nature, and when we get tired

1 we read, cut wood, prepare the cottage, and I have
2 ceased to fish. I used to fish a great deal but my
3 younger son is very allergic to fish, so the last 20
4 years I haven't done any fishing, although my middle
5 son goes down year round and he enjoys fishing.

6 Q. Approximately how many other cottages
7 are there on Cash Lake?

8 A. There are about, I think, 22 cottages
9 on Cash Lake.

10 Q. Now, can you briefly describe the
11 Cash Lake area, the topography, flora and fauna and
12 tree species?

13 A. Yes. It's Laurentian Shield country,
14 I suppose you would call it, with many granite
15 outcroppings. Where there is soil it is primarily sand
16 caught in the gullies of the granite and covered with a
17 relatively thin layer of topsoil which, in most places,
18 wouldn't exceed an inch.

19 There are a few places where there is
20 clay and I'm not sure what the depth of that clay would
21 be, but I suspect that in places it may be 20 feet or
22 30 feet deep. I'm not sure of that. So that the rock
23 and the sand is preponderant but some areas of clay
24 exist.

25 And the trees on that are -- conifers are

1 notable, jack pines, a lot of balsam, spruce, birch,
2 poplar, a few red pines, very very few white pines, and
3 then a lot of bush such as hazelbrush, mountain ash,
4 small elm brush - there aren't elm trees there - and
5 there are a lot of blueberries, raspberries, that kind
6 of smaller brush.

7 Q. Now, have you observed any changes in
8 the landscape as a result of timber harvest in the
9 area?

10 A. Well, yes, particularly starting in
11 1970 when the harvesting began to take place around Red
12 Deer Lake which is north of Cash Lake.

13 We had always paddled on Red Deer to get
14 to lakes further north and there are cottages there and
15 it became very barren looking as a result of the
16 logging and we were not pleased with the change, it
17 spoiled the lake.

18 Q. During that time period did you
19 observe any change of habitat for pileated woodpeckers?

20 A. Well, we did. We had never seen
21 pileated woodpeckers prior to 1970 and about 1971 or
22 '72 there became a regular pair and then two pairs and
23 I think finally three pairs in the area that we would
24 see regularly, and upon latter inquiry about those, we
25 discovered that they had been around cottages on the

1 Red Deer Lake and that they had disappeared about 1970
2 and they didn't see them any longer.

3 We enjoy seeing those and particularly
4 when, in June or early July we see the pileated
5 woodpeckers feeding their young and teaching them how
6 to put holes in the dead trees. We get a great deal of
7 enjoyment of out of those. They are a magnificent
8 bird.

9 Q. Now, if you can refer to page 2 of
10 your witness statement, please.

11 A. Yes.

12 Q. Paragraph 4 you've said:

13 "I have canoed and hiked in the Cash Lake
14 area for over 50 years..."

15 And I understand it's now in fact over 60
16 years?

17 A. Yes.

18 Q. "...and I'm deeply concerned that
19 timber management activities in the area
20 have caused or are likely to cause
21 adverse impacts on the natural
22 environment."

23 Are you opposed to all forms of logging?

24 A. I'm not opposed to all forms of
25 logging, no. I think that there are areas which have

1 been cut-over which have been or should be reforested
2 and can be dedicated to forestry, however, I think that
3 because the life cycle of the trees and the forest is
4 so long that I at this point have severe reservations
5 about further cutting of areas which have not yet been
6 cut.

7 Because the forest is an ecological
8 system, which it takes a great deal of understanding
9 and the time scale for that cycle is at least on the
10 order of 150 years, and I think that if we destroy by
11 cutting all of the forest that we may not be able to
12 revert back to gaining that system because we won't
13 know what it is we're doing.

14 Now, Jay Forrester of Massachusetts
15 Institute of Technology with his industrial dynamic
16 system did a number of studies for the Club of Rome in
17 the 1970s and he showed that there were many
18 misunderstood feedback cycles that affected human life
19 as well as life of mammals and plants through the
20 world.

21 I can only understand it to the extent
22 that it takes a great deal of study and very great care
23 to understand how the whole ecological system of trees,
24 thousands of different species of plants, of molds
25 fungi and insects all fit together to produce the both

1 beautiful and valuable areas, and we don't know how
2 that works.

3 So my view is that it's dangerous to log
4 any more of uncut areas and logging should now be for
5 quite some time maintained in areas which have been
6 previously cut.

7 Q. Are you a member of the Farlane
8 Environmental Protection Association?

9 A. I am.

10 Q. And can you tell the Board
11 approximately how many families are members of that
12 association?

13 A. I think it must be on the order of 40
14 families because although there are about 22 cottages
15 on Cash Lake there are also members from Star Lake, Red
16 Deer Lake and Kid Lake, and I think virtually everybody
17 has joined, and so I believe there would be about 40
18 families that are members.

19 Q. And are you giving evidence on behalf
20 of the Association?

21 A. I'm not giving evidence on behalf of
22 the Association; on the other hand, the Association
23 supports my views and are in agreement with my views to
24 the best of my knowledge.

25 Q. I'd like to turn now then to evidence

1 with regard to planning for the 1986-91 timber
2 management plan. Is it correct that since 1984 you are
3 the registered owner of your cottage property?

4 A. That is correct.

5 Q. Did you receive any direct notice
6 from the Ministry of Natural Resources that timber
7 management activities were being planned for the Cash
8 Lake area?

9 A. I did not receive any such notice
10 until February 17th, 1987 -- or actually I had a phone
11 call from a neighbour on the lake about two or three
12 days earlier before the letter of February 17th
13 arrived, but up until that time, no, I did not.

14 Q. And from the witness statement we
15 learn that on February 17th, 1987 you received a letter
16 from the Kenora District manager announcing that the
17 draft plan had been completed and that letter is in the
18 source book as Appendix A; is that correct?

19 A. Yes. Might I add that the way that
20 letter was generated was that one of the younger
21 neighbours was in Kenora in February to ski and just
22 happened to come across a Kenora paper that he called
23 the Kenora Miner and found a relatively small
24 advertisement advertising this.

25 He -- none of us had known about it and

1 he then attended at the Ministry of Natural Resources
2 offices and they said: Oh, we hadn't thought of you,
3 or something of that order, we better send a letter,
4 and they then did send a letter within a few days after
5 his drawing it to their attention.

6 Q. And how did you respond to this
7 letter?

8 A. Well, I responded within a few days
9 with a telephone call asking if I might be allowed to
10 delay the viewing of the timber management plan until
11 April as I was very busy in late February and March
12 with my duties at the university and put in a response
13 to the plan after reviewing it in April, after I could
14 get down to Kenora.

15 The answer was yes, that would be quite
16 in order and that the plan would not be finalized until
17 such time as I had a chance to respond.

18 In the meantime, after the telephone
19 call, I then completed a comment sheet that had been
20 enclosed and sent that to Mr. Pyzer of the MNR at
21 Kenora.

22 Q. And that comment sheet appears as
23 Appendix B in the material; does it not?

24 A. Yes.

25 Q. Now, you've indicated to the Board

1 that you intended to file or examine the plan and
2 comment further on it. When was the plan then
3 approved?

4 A. Well, I think it was approved very
5 shortly after. I think it had been approved by the
6 time I arrived at the -- in fact the letter of March
7 19th --

8 Q. This is Appendix C?

9 A. Appendix C.

10 Q. Yes.

11 A. Letter March 19th from Mr. Pyzer
12 District Manager, Kenora said the plan is approved.

13 "The approved timber management plan will
14 remain available for public inspection",
15 in his final paragraph in letter of March 19th,
16 Appendix C.

17 Q. And then from Appendix D we see a
18 further letter to you from Mr. Pyzer in response to
19 your March 10th letter, this is after the plan had been
20 approved?

21 A. Yes.

22 MR. MARTEL: Could I go back a moment,
23 then.

24 MS. SWENARCHUK: Yes.

25 MR. MARTEL: When, Dr. Henderson, you

1 contacted MNR when they were seeking approval of the
2 draft plan, what did they agree to do -- my notes say
3 they waited to hold -- until they had heard from you
4 further, but then by March they had already approved it
5 and I've obviously written something down erroneously.

6 When you contacted the MNR originally so
7 that you would have an opportunity once your duties
8 weren't as onerous at the university to look at the
9 plan, what did they agree to do then, just leave it
10 open for you to review?

11 THE WITNESS: That was my understanding
12 on the telephone, yes.

13 MR. MARTEL: Nothing further though?
14 They were going to proceed with the final approval
15 despite what comments you might make?

16 THE WITNESS: Well, I didn't think that
17 they were going to do that. Now, understand that I
18 didn't comprehend the sequence of the plan because I
19 was completely without knowledge of how these plans
20 worked, this was my first contact with them, and so I
21 phoned seeking information and my understanding that
22 the commitment that I got on the telephone was that
23 they would hold the plan unapproved until such time as
24 I could view it and respond.

25 Now, with someone who understood the

1 whole planning process they maybe would think that what
2 was said meant something different, but without knowing
3 the sequence of planning or how the whole protocol
4 works, I couldn't interpret it any other way -- what I
5 heard over the phone any other way than they would hold
6 it and not approve it, not complete the plan; in other
7 words, until I had had a chance to look at it.

8 MS. SWENARCHUK: Q. How did you feel
9 then when you got the letter indicating that the plan
10 had been approved?

11 A. Well, it seemed to me that there was
12 a conflict in the message I had received and the letter
13 of March 19th and the action taken as stated in the
14 letter of March 19th and that the process was being
15 hurried without giving me a chance to comment.

16 Q. And when did you attend the MNR
17 office then to review the plan?

18 A. Okay, it was in April, I think it was
19 April 12th that I attended.

20 Q. And how long did you spend reviewing
21 the plan?

22 A. I spent about two and a half hours.
23 April 16th maybe.

24 Q. 16th from the notes --

25 A. 16th, yes. April 16th, yes.

1 Q. And what was the reaction of the MNR
2 staff when you were present in the office?

3 A. Well, they were courteous, they did
4 get the plan out of the files, they gave me a corner of
5 a desk to sit at or a table, but they seemed a little
6 uneasy and they -- I think they were conscientious in
7 trying to attend to me but they seemed to be uneasy
8 when I asked them some questions.

9 Now, they're busy at other things and I
10 suppose I was interrupting their routine and they had
11 duties to do, but they were -- when I asked them
12 questions I got the feeling that they would rather I
13 didn't ask any more, but in every case they were very
14 courteous in giving me some kind of an answer and
15 sometimes the answers were straightforward, other times
16 they were, I would call them, somewhat hedged.

17 Q. Now, in your view would it have been
18 helpful to you if the Ministry had provided you with a
19 comprehensive summary of the plan to review in your
20 home?

21 A. Oh yes, it would because then I could
22 have reviewed it maybe on the weekend and then I could
23 have responded to it by letter or something of that
24 nature, which I couldn't do in this case without going
25 down to Kenora, drive about two and a half hours.

1 Q. And I understand then that Appendix X
2 represents the notes that you completed when you
3 reviewed the plan in April?

4 A. Yes.

5 Q. And would you like to comment to the
6 Board on what the appendix reflects?

7 A. Yes. I wanted to know what was going
8 to happen, and so I took some notes as to what the
9 output of the operation was going to be in terms of
10 wood and what the input was going to be in terms of
11 money, and it appeared to me that there was very, very
12 substantial amounts of money going into this, and
13 although I'm not at all up to date on the values of
14 wood, it seemed to me that this was going to be a very
15 expensive operation and that the upkeep of these roads
16 after expensive construction was going to add a lot of
17 cost and they had to be kept up for a minimum of 20
18 years.

19 MS. SWENARCHUK: Excuse me. Are you
20 having difficulty?

21 MADAM CHAIR: Which appendix are you on?

22 MS. SWENARCHUK: I think you just found
23 it.

24 MADAM CHAIR: F.

25 MS. SWENARCHUK: F, yes.

1 THE WITNESS: I'm sorry, Madam Chairman,
2 should I review -- start again?

3 MADAM CHAIR: No, that's fine, go ahead.

4 THE WITNESS: So I wanted to get some
5 numbers on the size of the project to understand it, to
6 understand what was going on.

7 I had no earlier knowledge of it and
8 these were the thoughts that were going through my mind
9 just in trying to assess it, and I did this for my own
10 purpose more than anything else so that I could, in
11 some way, quantify what was planned to happen.

12 MS. SWENARCHUK: Q. Now, if you look at
13 paragraph 11 at page 5 of your witness statement--

14 A. Yes.

15 Q. --there's an account of a meeting at
16 the Kenora District between 17 Cash Lake cottagers,
17 several MNR representatives and a logging contractor
18 and about the ninth line down you said:

19 "The MNR representatives indicated that
20 no harvesting or tertiary road building
21 would occur in blocks 9 and 10 until the
22 cottagers' concerns had been assessed and
23 until the cottagers reviewed the MNR's
24 finalized proposals for the area.

25 Nevertheless, the district manager

1 seemed quite firm that the proposed
2 timber management activities would occur
3 as planned despite the concerns raised by
4 cottagers.

5 Subsequent to this meeting I
6 received a letter dated June 11th, 1987
7 from the Kenora District manager who
8 purported to provide minutes of the
9 meeting and a summary of the cottagers'
10 concerns...", and a copy of this letter
11 has been filed as Appendix G with the minutes attached.

12 Now, first of all, Dr. Henderson, would
13 you describe what occurred at this meeting and,
14 particularly, would you describe the cottagers'
15 concerns?

16 A. The meeting opened with quite a long
17 statement of the fire fighting which was currently
18 going on in Kenora and I think Mr. Pyzer was -- had his
19 mind very much on that, and I can understand that was
20 an urgent matter, but he addressed the cottagers about
21 it for a period of approximately 20 minutes or 25
22 minutes.

23 It wasn't precisely germane to our visit
24 there, although certainly it was an urgent matter on
25 his agenda and I can understand him being involved in

1 that very heavily.

2 After that almost every one of the 17
3 cottagers spoke and raised various concerns and
4 wondered what was going to happen about the quality of
5 water in the lake, what was going to happen on the
6 creek which has a falls between Caribou and Cash Lake,
7 what was going to happen to the birds and the animals,
8 what was going to happen to the spring, and what was
9 going to happen to the various plants, including
10 orchids.

11 What would be the rules of harvesting;
12 for example, what would be the maximum slope on which
13 harvesting would be permitted, how close to the lake
14 would harvesting be allowed. And everyone had one or
15 more concerns which was voiced.

16 Q. And how would you describe the
17 response from the Ministry officials?

18 A. I would describe the response as
19 non-committal, congenial, pleasant, but non-committal
20 except as to a fairly bland promise to investigate.
21 There weren't, as I recall it, many specific and exact
22 answers: Yes, we can do that and will do it; or, no,
23 we cannot do that and won't do that.

24 However, the summary was a very firm
25 statement by Mr. Pyzer that regardless of anything else

1 he was charged with seeing that there was a harvest of
2 310,000 cubic metres of wood each year and that would
3 be done regardless of what else was done, and he made
4 that quite clear, that any of the considerations for
5 the environment would have to come secondarily -- or
6 secondary to the harvesting. That was something that
7 he must see was done and that the other concerns we
8 raised might be able to be met, if he could, but not if
9 it was going to reduce the timber harvest.

10 Q. Now, attached as part of Appendix G
11 are the minutes that were provided to you by the
12 Ministry of that meeting.

13 A. Yes.

14 Q. Now, to your recollection do these
15 minutes adequately reflect what occurred at the
16 meeting?

17 A. Well, they don't at all and in a
18 university position I attend and a member of many
19 committees and read many minutes. Quite often those
20 minutes are of committees where there is a strong
21 opposed feeling, and so the minutes are important.

22 If I had -- if I was on a committee
23 receiving these minutes I would not vote to accept
24 them, they are not at all complete and they don't
25 contain most of the important points made by the

1 cottagers.

2 I commented later to Mr. Pyzer that I
3 realized that writing a good set of minutes for a
4 meeting of two and a half hours or so is an onerous
5 task and I understood he was quite busy, particularly
6 with forest fires; on the other hand, I said, once a
7 task is undertaken it's a duty that has to be filled,
8 it can't be done part way, but that's a matter of...

9 Q. Now, some of these views are
10 indicated, Dr. Henderson, in Appendix H which is your
11 letter to Mr. Pyzer of July 30th, 1987.

12 A. Yes.

13 Q. I would like to refer you to the
14 first sentence of the third paragraph of that letter.

15 "I continue to be concerned with your
16 overriding need to cut 310,000 cubic
17 metres of wood annually regardless of the
18 environmental destruction which that
19 cutting causes and continue to be
20 concerned with the damage which will be
21 done if you decide to cut block 9
22 particularly and block 10."

23 Why did you include those comments in
24 your letter?

25 A. Well, if you have one condition that

1 has to be met at the cost of any of the other
2 conditions, then clearly some of the other concerns may
3 very well not be met.

4 And I suppose that I'm concerned and
5 other people are concerned whenever they don't
6 understand a complete operation, but as I began to
7 understand this forest operation, it seemed to me that
8 the overriding need to cut the wood, keep the forest
9 cutters working and the mill running meant that
10 everything else had to go by the board.

11 And, therefore, having seen some clearcut
12 areas I felt that we were liable to be in for severe
13 destruction in blocks 9 and 10 which have been very
14 dearly enjoyed areas by myself and family and many
15 other cottagers at Cash Lake.

16 Q. Now, you refer further down in this
17 paragraph to five types of orchids. How did you
18 identify them?

19 A. The identification really was done by
20 my wife who, at quite a late stage in life, completed
21 her Bachelor of Science in 1987 and majored in botany,
22 had just completed taking taxonomy of botany.

23 So I am better at walking through the
24 woods than she is, I know my sense of direction, my
25 understanding of the block 9 is better, but we spent

1 quite some time walking through the woods and she had
2 always been in the habit of looking down and saying:
3 Well, this is such and such a plant, but now on this
4 summer of '87 -- July, '87 we spent some time quite
5 carefully identifying plants and orchids.

6 The reason we did this is that for many
7 years we have just loved to see the stemless
8 lady's-slipper, the *Cypripedium apollo*, and we have put
9 stakes beside the plants throughout much of the woods
10 around our cottage so that nobody will step on them.

11 And as her knowledge of botany had grown
12 she realized that there were others that we weren't
13 looking at carefully and she had seen them, and so we
14 began to try to identify these so that they wouldn't be
15 damaged, and this was the list of the orchids that we
16 discovered.

17 Q. Now, why did you indicate to the MNR
18 that these plants particularly should be surveyed and
19 flagged and protected by a reserve?

20 A. Well, I suppose it was because we had
21 been protecting the stemless lady's-slippers in that
22 way for probably 25 years and they had flourished a bit
23 as a result and come along because we made sure that we
24 didn't step on them and they were protected, and we
25 felt that the others were as pretty and as valuable and

1 probably as rare and, particularly, my wife tells me
2 that some of these plants take as long as 15 years
3 before they produce a single seed, and so if you kill
4 them off in the 13th year they don't produce the seed.

5 And they're a peculiar -- orchids are
6 peculiar plants, very interesting qualities to them,
7 and we felt that as they were rare and hard to -- in
8 our opinion, and definition of rare I gather is
9 different in different ways, but you don't see many of
10 them, it's -- they should be protected.

11 Q. And, to your knowledge, were these
12 plants -- well, did the Ministry of Natural Resources
13 then conduct a field survey of the plants in question?

14 A. If they did I was not advised of it.
15 They never at any time requested advice on where we had
16 seen them or if I might guide them -- a botanist to the
17 plants, or if I could identify on a map for them where
18 they might be and so, as far as I know, they never did.

19 Q. And that said, could you indicate for
20 the Board on the map approximately where you found the
21 plants?

22 A. Well, they were scattered, but we
23 found a number of them in the spring drainage basin
24 and, looking southeast from the spring, it goes across
25 the no-cut reserve as orange dots and into the small

1 white patch of cut area projecting westward into the
2 no-cut reserve below the spring. It was in that area
3 that we found quite a number of them.

4 The reason I think is that that is the
5 drainage basin for the spring and the condition is ripe
6 for them. Where there's moisture, where there are
7 large trees to shade them and yet some sunlight.

8 And in inspecting for those again in 1980
9 and taking pictures, which didn't turn out very well,
10 we found right at the lip of the retaining pond above
11 the ravine that feeds down to the spring.

12 Q. Now, would you support a requirement
13 ordered by this Board that the MNR conduct field
14 surveys of timber and non-timber resources in areas
15 eligible for harvest?

16 A. Well I would, yes.

17 Q. Now, in Appendix I in the materials
18 we see a letter from Mr. Pyzer to you replying to your
19 concerns and attached are about eight pages of details
20 as well.

21 First of all, were there any problems
22 with respect to the MNR with these proposals?

23 A. Well, yes. I measured -- scaled on
24 the map, the scale was 1:15,840 which is one foot
25 equals three miles, and so using that scale I checked

1 to see whether the no-cut line was that far back from
2 the lake and it wasn't, and so I felt that the verbal
3 description of what was going to be done and the map
4 disagreed and, therefore, I drew that to Mr. Pyzer's
5 attention by letter.

6 Q. Now, on page 2 of the attachment we
7 see in the last paragraph of that page with regard
8 to -- under the heading Aesthetic Buffer Behind
9 Property Lines, that:

10 "The age of some of the timber within
11 this no-cut reserve is mature to
12 overmature (80 plus years). It is
13 already exhibiting deteriorating
14 conditions.

15 "Full-tree logging (removal of the
16 whole tree from site) of selected trees
17 from the reserve would help preserve the
18 park-like setting."

19 Now, were you in agreement for the
20 proposal for full-tree logging in that area?

21 A. Well, not at all, because it would
22 just destroy the park-like setting and, in particular,
23 it seemed to me that the MNR had their eye on some
24 large red pines which are very close to block LK 254
25 and that they probably wanted to come in there and cut

1 those large trees.

2 We consider those a very prime value of
3 the cottages and for years we have journeyed up maybe
4 as often as every week just to view the trees, the red
5 pines, and when I was about 12 years old there was a
6 very hot summer and three of us would every day take
7 pails of water up to water the small red pines that
8 were growing because we were afraid they might die, and
9 we played up there and tended to the red pines because
10 those are important.

11 But to me, if they were going to log they
12 wouldn't log for pulp, they would log for sawmill logs
13 and sawmill logs would be the large red pines which are
14 probably 150 years old now, the big ones they want, and
15 that would spoil the park-like setting, it wouldn't add
16 to it.

17 Q. Now, again reading from these notes
18 attached to Appendix I, on page 8 in the third
19 paragraph we see, starting in the third sentence:

20 "In the interest of good management of
21 our forest resources, we can ill afford
22 to prohibit all cutting from blocks 9 and
23 10, however, we believe that your
24 concerns have been adequately addressed
25 this proposed harvest plan by

1 implementing reserves to maintain the
2 aesthetic qualities of the areas
3 frequented by cottagers."

4 Do you agree that the cottagers' concerns
5 have been adequately addressed?

6 A. Well, not in my opinion and, of
7 course, I can't -- the opinion of members of the MNR
8 would very likely be different from mine, but I didn't
9 feel that our concerns were addressed at all, that
10 really the original plan was adhered to and there was
11 very, very little change from the original intention
12 and original plan, as far as I could follow.

13 Q. Now, in the third and last paragraph
14 on that page in the first sentence we read:

15 "We are trying to reach a fair and
16 reasonable solution to your concerns
17 based on the premise that we cannot
18 reserve any specific area for a single
19 use."

20 Now, do you agree with the MNR's
21 suggestion that the cottagers were asking for this area
22 to be reserved for a single use?

23 A. Well, I can see that they might view
24 it that way, but I think that they may forget that
25 there have been a number of uses.

1 For example, for many, many years the
2 Indians used this area to pick blueberries and the
3 years 1943 to 1944 I was hired by Duggan Brothers of
4 Redditt to buy blueberries from the Indians and used to
5 buy on the average of a hundred baskets a day from them
6 and they would pick them, a good many of them, in the
7 block 9 area.

8 There are raspberries in there, there are
9 a number of herbs in there, and the Indians used to go
10 in there to get those.

11 So that there are those uses, there's the
12 recreational use of just walking through it, there's
13 skiing, the --

14 Q. Is there any trapping, Dr. Henderson?

15 A. There's trapping, yes. The
16 trapper -- and again, for many years Indian trappers
17 Joe Strong and Bill Strong and Pat Loon all trapped in
18 there, and we were quite familiar with where they went.
19 They would also cut some special pieces of birch in the
20 30s when they still made birch bark canoes.

21 Now, the Grassy Narrows Reserve from
22 which most of those people come, have deteriorated in
23 recent years but I think now they are rehabilitating
24 and getting back.

25 And I might mention that I was an Ontario

1 licensed guide in the years 1948 to '49 and worked with
2 the Indians very closely and portaged together, I slept
3 in the same tent, we would sometimes eat out of the
4 same frying pan and I got along with them very well.
5 They always wanted to do more than their share of the
6 work on the portage.

7 And they can make a lot of use out of
8 that land and have done so in the past. And
9 commercially the Duggans did very well in a small town
10 of Redditt, they would give employment to the Indians,
11 they would give employment to the white people too in
12 berrypicking in the summer, and yet they scraped quite
13 a good living out of Redditt which is a very small
14 town, just a railway stop.

15 So it seemed to me that there are more
16 than just cottagers' uses there. And that there are
17 many, many species; for example, I didn't ever look for
18 ginseng, but ginseng is a very valuable crop and where
19 the germanium content is high enough you can grow very
20 good ginseng. Well, we don't know whether there might
21 be ginseng in there or not, I haven't looked for it.

22 There are things like that that could be
23 not only of enjoyment but of value, and it hasn't been
24 reviewed for those purposes.

25 Q. Now, in Appendix J we see a letter

1 that you wrote in response to Mr. Pyzer's previous
2 letter. Can you briefly summarize your concerns as
3 they were reflected in this letter?

4 A. Well I felt, first of all, that the
5 maps were showing the cut zone too close to the lake
6 and I'll say that I later found another map which
7 showed that it wasn't quite as far off as I thought at
8 first but, nevertheless, serious errors in the mapping
9 versus the verbal statements.

10 I was very concerned about the spring.
11 The spring flows water year round at about 34, 35
12 degrees fahrenheit, 2 gallons a minute of very, very
13 clear water. Everybody on the lake uses it. We and a
14 few of the other cottagers use it as our refrigerator
15 and there's spring house there, fairly rotted now, but
16 we put some crocks in there and we put our meat and our
17 fresh goods in there and the spring keeps it absolutely
18 ice cold.

19 And so it's very useful to us and we need
20 the water because the lake water in July and August
21 really is not drinkable and I think by the MNR or the
22 Ontario provincial standards it's not drinkable, and so
23 that this spring is necessary and used by us regularly.

24 Q. Now, could you indicate the location
25 of the spring on the map?

1 A. Yes, I can and I referred to it
2 earlier. There is a black dot in -- to the right side
3 of Cash Lake and the word spring is down in the white
4 space below.

5 Q. Now, could you indicate too the path
6 of the spring, the holding pond, et cetera, that you
7 mentioned earlier?

8 A. Yes. It cuts diagonally to the
9 southeast across the dotted -- orange dotted no-cut
10 reserve and then runs into the white cut projection
11 that goes to the westward from the other cut
12 projection, and there's a very deep ravine that leads
13 from an intermediate holding pond and that's back just
14 before the vertical round patch which is a rock
15 outcropping and the water runs off that rock and into a
16 swampy area which becomes quite a large pond in the
17 springtime and then gradually dries.

18 But in the springtime there is a deep
19 ravine that runs out of that retaining pond and the
20 ravine is about 12 feet deep through a good length of
21 it and about 20 feet wide and it's in a clay area at
22 that stage and there are trees on, it but there is a
23 very heavy flow of water down that in April and in May
24 and it's the head of water, as far as I can understand
25 it, it's the head of water that's held by that

1 retaining pond that infiltrates the whole sand area
2 which then keeps the head of water and the steady flow
3 of the spring down at the lower level.

4 And my understanding of it is that if
5 that pond is cut and the trees don't shade it and the
6 cut is contained down the ravine, then -- as it's
7 planned, then the water will wash away much of the mud
8 and clay in the ravine and the retaining pond will be
9 dried out and there won't be the head of water to
10 maintain the flow to the spring year round.

11 Q. Now, we're going to come back to the
12 subject of the spring. Is it fair to say, Dr.
13 Henderson, that you are very concerned about the
14 impacts of timber harvest potentially on that spring?

15 A. I am, very much so.

16 Q. Now, we won't review all the other
17 issues that you have reviewed in Appendix J. I'd like
18 to turn though to the second paragraph of that -- the
19 second page of Appendix J, the third paragraph in which
20 you have indicated:

21 "I must also point out that your
22 statement on page 1 of your plan that a
23 crop of trees will come on line every 70
24 years does not agree with my experience
25 of the last 58 years during which I have

1 been a continuous summer resident of
2 Farlane and Cash Lake."

3 Now, would you explain for the Board
4 those comments, please?

5 A. Well, yes. In 1930, '31, '32 when I
6 was quite a small boy the jack pines that are now there
7 were growing, they were relatively small, maybe about
8 three inches in diameter. One of my first jobs was to
9 sit on the log on the sawhorse so that the log wouldn't
10 move while my father cut the log with the saw.

11 I guess to amuse myself I began counting
12 the rings and the rings at that time were about 45 or
13 50 rings at the foot root of the tree.

14 Q. This is in a 3-inch diameter?

15 A. In about a 3 1/2-inch diameter.
16 Those same trees, many of them now of course have
17 survived and have grown much larger and are now up to
18 10 or 12 or 14-inch diameter and as they die I will use
19 them for firewood. Maybe when I get tired, I suppose
20 that's when it is, I'll stop and take a breather and,
21 again, I count the rings at the bottom cut, the bottom
22 log and they are now up to the hundred, 105, 110-year
23 range.

24 And in investigating it appears to me
25 that there was a fire, a forest fire through that area

1 probably about 1880 or 1875 or thereabouts, and there
2 are still some trees that have shown the -- some burn
3 marks on them, some of the larger ones.

4 And so I think that what happened was
5 that there was a forest fire, maybe somewhere a round
6 1875 or 1880, and the fire caused the cones of the jack
7 pine to seed and grow a jack pine forest.

8 So my conclusion is that in 70 years you
9 don't grow a sizable jack pine, that in 70 years you
10 grow maybe a 6 1/2 or 7-inch jack pine, you don't grow
11 a 12-inch jack pine.

12 And although I don't understand the
13 forestry requirements very well, I get the feeling that
14 a 6- or 7-inch diameter jack pine at the bottom is not
15 of great interest for forestry.

16 Q. You then sent another letter to Mr.
17 Pyzer and this is in your source materials as Appendix
18 K?

19 A. Yes.

20 Q. Why did you send this letter?

21 A. Well, I wanted to be as careful as I
22 could in any request I made and any comments I made
23 that I wanted to make them as close to the truth as I
24 possibly could, and when I discovered that I had
25 errored in missing a map which showed the no-cut

1 reserves in a different way, I wanted to hasten and
2 correct my statement of July 5th letter and state that
3 there was about 900 feet from the lake protected rather
4 than what I said earlier, something like 6- or 600 or
5 so, and that was my purpose.

6 But also I wanted to expand upon what I
7 had seen in trees when I was younger and I describe
8 that in paragraph 2 of Appendix K of my July 11th
9 letter.

10 Q. Then in the third paragraph of the
11 letter you have also said:

12 "I continue to be concerned about the
13 lack of definition of the drainage basin
14 for the spring, protection for orchids
15 and other valuable plant species and
16 the viability of the whole cutting
17 process in this block 9.

18 "The prospective destruction of the
19 thin soil painfully formed over 10
20 millenia through exposure of rocky slopes
21 bared of trees adds further to my
22 concern."

23 Can you explain that concern, please?

24 A. Yes. The final sentence you're
25 referring to?

1 Q. Yes.

2 A. Yes. The soil on the prairies, for
3 example, is chernozem soil and that's formed by the
4 tall prairie grasses which die every year and rot and
5 that's the kind of soil that's formed both in the
6 Canadian Prairies and in the U.S. Prairies and in the
7 Ukraine that soil from -- that tall prairie grass forms
8 good soil relatively quickly; in other words, in a
9 thousand or 2,000 or 3,000 years you can get several
10 inches of soil.

11 But because of the rocky kind of -- and
12 sand in the Cash Lake area and the other Laurentian
13 Shields area, the kind of growth of trees and other
14 shrubs don't create soil as quickly and so the soil is
15 there is, oh, an inch, half an inch, inch and a half in
16 that area and that presumably has occurred since the
17 end of the ice age 12,000 years ago.

18 Now, if you can only form an inch of soil
19 in 10- or 12,000 years and if you log it and the rain
20 then comes and washes that soil into the water, into
21 the lake, not only do you silt the lake but you have
22 got to wait another 10- or 12,000 years to make that
23 soil under the same conditions.

24 I'm not aware of any technology which has
25 shown the world how to make soil and so, as far as I

1 know, we're stuck with the soil that has been made in
2 the last 10- or 12,000 years in this area that was
3 covered by the ice age.

4 So if we lose that soil how can we grow
5 anything. And the trace elements which are needed by
6 the trees such as zinc and maganese, magnesium
7 potassium, chromium and so on, copper, these I think
8 are distributed by the occasional volcano such as Mount
9 St. Helen's in 1980 and you get a little bit of these
10 materials from time to time, but they are very slight
11 and scattered.

12 So that between the slowness of making
13 soil and the lack of the trace elements, I think that
14 we have to be very careful to protect the soil or we're
15 just going to have a sand and rock desert there.

16 Q. I want to turn now to page 8 of the
17 witness statement, paragraph 17. In this paragraph you
18 describe a meeting you attended in the Kenora District
19 office on June 12th, 1989 and you've said:

20 "The MNR staff were courteous and
21 attentive but did not respond directly to
22 my concerns. I learned that the MNR
23 staff had spent considerable time
24 reviewing questions and had endeavored to
25 gather data on them but MNR staff was not

1 authorized to release such information to
2 me."

3 Could you just describe a little more
4 what occurred at that meeting?

5 A. Well, yes, because it was about a
6 forest I was introduced to Mr. Nick Baggs and taken
7 into his office, and he was at that time quite new on
8 staff and apparently wasn't very sure of this plan and
9 so he recruited Mr. Chris Marsh who had been the
10 previous forester on the task and Mr. Marsh came into
11 Mr. Baggs's office and I asked questions and they were
12 both very courteous and tried to be helpful, but Mr.
13 Marsh said: Well, I'm sure you're going to get a
14 letter from Mr. Pyzer within about two weeks, and I got
15 the impression that he himself had drafted the letter
16 and it was waiting for Mr. Pyzer's signature, that was
17 the feel I got, although he didn't say that, he implied
18 it.

19 And there were some things that they
20 answered, but they seemed to be reluctant to give me
21 answers, certainly to the questions that I had asked by
22 letter and, as I say, they were very courteous but they
23 would say: Well, I'm not sure about that, or Mr. Pyzer
24 will be writing to you.

25 And I got the distinct impression that

1 they had been told to prepare a reply but not to -- to
2 leave the answer to Mr. Pyzer and there may be good
3 reason for him to have done that, but that was the
4 impression I got.

5 Q. Did you then receive a letter from
6 Mr. Pyzer within about two weeks?

7 A. I did not, no. No, I did not receive
8 that letter in two weeks. I finally -- I waited until
9 September the 1st and as I was going to begin to get
10 busy at university matters again, I decided I better
11 write while I still had a bit of time, and so I wrote
12 him on September 1st, that was two and a half months
13 later, the letter had not arrived.

14 Q. And that letter of September 1st is
15 Appendix N in the material; is it not?

16 A. Yes, that's correct.

17 Q. Now, on page 2 of the letter in the
18 first paragraph you have raised the question of the
19 critical marking of the cut boundaries as an issue?

20 A. Yes.

21 Q. And what was your concern regarding
22 this matter?

23 A. Well, at that time the plan was to
24 cut block 9 in the winter of 89-90 and here it was
25 September 1st and there was no sign of any markings.

1 I didn't know whether they were going to
2 mark or whether they were just going to come in and cut
3 where they felt like cutting, but I felt that it was
4 very minimum. We must have the opportunity to view the
5 markings of the edge of the cut line before it went
6 ahead, because it had already been shown that their
7 verbal statements and their maps were not in agreement.

8 And so I thought that I wouldn't be too
9 surprised if their markings on the ground and their
10 maps and their verbal statements, all three, might
11 disagree, and I at least wanted to view the markings
12 and that's -- we were getting to within three months of
13 cutting time and nothing had been done.

14 Q. In the next paragraph you refer to
15 questions regarding pileated woodpeckers. What was
16 your concern here?

17 A. Well, the problem with pileated
18 woodpeckers is that they need very large trees to nest
19 in and to get the grubs and other insects on which they
20 live, and so if those large trees are cut down, then
21 how are they going to live.

22 And I referred to the ivory-billed
23 woodpecker which is now extinct and the reason it's
24 extinct is because all the large trees along the
25 Mississippi and its tributaries were cut down and it

1 seemed to me that the same situation might prevail with
2 the pileated woodpeckers.

3 I didn't have much information, so I
4 asked Mr. Pyzer how many hectares of mature forest did
5 each of these birds need to survive and breed, and I
6 thought that at least someone in the MNR could
7 determine that and we could find out if there was
8 enough uncut area left to take care of them or not.

9 MS. SWENARCHUK: Before my next question
10 I would like to file another exhibit, Madam Chair, and
11 this is a package of interrogatories from this panel.

12 This will be Exhibit 1800, is that right?

13 MADAM CHAIR: Yes, this will be Exhibit
14 1800.

15 MS. SWENARCHUK: And this is a package of
16 interrogatories with regard to Dr. Henderson's witness
17 statement in FFT Panel 2, and the interrogatories
18 included are OFAH No. 2 and MNR No. 3, 6, 7, 8, 9, 12,
19 and 13. (handed)

20 ---EXHIBIT NO. 1800: OFAH Interrogatory No. 2 and MNR
21 Interrogatory Nos. 3, 6, 7, 8, 9,
22 12 and 13 re: FFT
23 Panel No. 2.

24 MS. SWENARCHUK: Q. Now, I want to ask
25 you about the third paragraph on the same page we were
26 looking at a moment ago, that's page 2 of Appendix M,

1 and in this paragraph you raise a concern about the
2 slope on which harvesting was to occur.

3 And can you just outline that concern for
4 a moment, please?

5 A. Yes. Well, it has to do with the
6 topsoil and whereas if you cut on a plain flat area the
7 topsoil is not likely to be eroded because the water
8 won't flow at all quickly; the greater the slope, then
9 the more rapid is the flow of water in times of rain.

10 In addition, when the forest is gone the
11 water is not held by the upper branches of the leaves
12 and the needles of the trees but falls immediately on
13 the ground and flows very quickly. So that a slope
14 area which might not have very rapid flow when the area
15 is fully forested will have rapid flow when the forest
16 is cut. And so it seemed to me that there must be some
17 maximum slope which it's safe to cut, beyond that, the
18 flow of the water would be so rapid the soil would be
19 washed off.

20 This is particularly true since a good --
21 a large amount of block 9 and 10 are granite with thin
22 covers of soil, just large enough to get a tree
23 growing, but once the tree is gone then there's some
24 slope, in my opinion, which is the maximum that can
25 still allow soil to remain. If beyond that slope all

1 the soil would be washed off, you'll have nothing but
2 bare granite and nothing can grow there again.

3 So it appeared to me that there should be
4 and probably was some requirement as the maximum slope
5 on which trees could be cut, and I had never got an
6 answer to that and I still don't know what that maximum
7 slope is in the cutting regulations, but I wanted to at
8 least know what it was so I could understand that.

9 Q. Now, I just wanted to return for a
10 moment to the question of the pileated woodpecker. If
11 you turn in this package of interrogatories--

12 A. Yes.

13 Q. --to MNR No. 12 which is close to the
14 end.

15 A. Yes.

16 Q. The Ministry asked questions of the
17 FFT position, and that's the question in the second
18 paragraph of the response.

19 But I wanted to refer for a moment to the
20 first paragraph of the response which reflects, I
21 understand, your concerns.

22 You've indicated that:

23 "In Appendix N the Kenora District
24 manager has indicated that the whole
25 range for this species is 121 hectares

1 per pair and that 90 hectares will be
2 left untouched in the area of block 9.

3 "The witness is therefore concerned
4 that the MNR proposal is not providing
5 adequate habitat for the pileated
6 woodpecker in the area, particularly
7 since the witness has observed at least
8 three different pairs of pileated
9 woodpeckers in the area."

10 Does that continue to summarize your
11 concern?

12 A. Oh yes, it does, and I couldn't quite
13 understand why the answer which is shown in a later
14 exhibit of -- letter September 29th from Mr. Pyzer that
15 a pair requires 121 hectares and they've allowed 90
16 hectares was a satisfactory protection of the pileated
17 woodpeckers. I don't understand why he thought that
18 that would allow them to survive.

19 Q. Now, just completing our look at
20 Appendix M--

21 A. Yes.

22 Q. --you wrote in the fourth paragraph
23 on page 2:

24 "Although I have other reservations and
25 concerns about proposed logging in

1 block 9 adjoining Cash Lake, suitable
2 resolution to the questions stated above
3 would go a long way to resolving these
4 concerns.

5 "To ate you seem to have followed a
6 policy of courteously receiving questions
7 about the environmental concerns but not
8 answering them and not changing your path
9 of action substantially either to protect
10 the environment in your overwhelming
11 desire to provide 310,000 cubic metres of
12 wood annually as you're required to do."

13 Now, what did you mean by these comments?

14 A. Well, we have -- I have talked about
15 several times when I have asked a question and Mr.
16 Pyzer replies with different kind of information,
17 usually in a positive vein, in his view, but he doesn't
18 go to my specific evidence and say, I disagree with
19 this evidence or this is the way this evidence fits and
20 the answer is such and such; what he has done
21 continuously, it seemed to me, is to talk about
22 departmental regulations which may or may not apply or
23 some parallel or near subject, but not to reply
24 specifically to the evidence that I have supplied and
25 the concern that I have described, and that he then

1 characterizes his answer as being satisfactory to me
2 and that he's answered my question, when in fact he
3 hasn't answered my question. And so I was commenting
4 that is what he seemed to do, and that is what I think
5 he does.

6 MS. SWENARCHUK: Would this be an
7 appropriate time for the break, Madam Chair?

8 MADAM CHAIR: Yes, it will be, Ms.
9 Swenarchuk.

10 How much longer do you expect to be in
11 your examination?

12 MS. SWENARCHUK: Perhaps another hour.

13 MADAM CHAIR: And can we have some ideas
14 from -- you'll be cross-examining, Ms. Seaborn?

15 MS. SEABORN: Yes. I will be about 10 to
16 15 minutes, Madam Chair.

17 MADAM CHAIR: Ms. Blastorah?

18 MS. BLASTORAH: I expect I'll be
19 approximately an hour. I believe Mr. Cassidy, since
20 he's not here, indicated he might have a few questions
21 but I don't expect he would be very long.

22 MADAM CHAIR: All right. Well, we won't
23 be able to complete Dr. Henderson's examination before
24 lunch.

25 MS. SWENARCHUK: I don't expect we will.

1 MADAM CHAIR: All right, fine. We will
2 be back in 20 minutes.

3 ---Recess at 10:25 a.m.

4 ---On resuming at 10:55 a.m.

5 MADAM CHAIR: Please be seated.

6 MS. SWENARCHUK: Q. Now, Dr. Henderson,
7 I believe you finally received a response from the
8 Ministry in September of 1989 and this response is
9 Appendix N in the materials?

10 A. I did receive that, yes.

11 Q. Yes.

12 A. Dated September 29th from Mr. Pyzer,
13 yes.

14 Q. That's right. Now, do you have any
15 concerns about the contents of this letter?

16 A. Well, yes. And he characterized it -
17 and maybe in his understanding he felt he had answered
18 my questions - but, as I had stated earlier, my feeling
19 was that he avoided rather than answered most of them
20 and answered with different facts or different points.

21 Q. Can I refer you -- go ahead.

22 A. Go ahead. Well, for example, on page
23 2 the small Roman numeral (iii), Mr. Pyzer says:

24 "In the future managed stands can be
25 grown in much shorter time frame of 35 to

1 90 years."

2 Now, I am not knowledgeable about
3 forestry, but I can't understand how you could grow a
4 jack pine or red pine large enough for harvesting in 35
5 years because anything I have seen grown in that time
6 in the Cash Lake area would be maybe 2 1/2 or 3 inches
7 in diameter.

8 And so he may have information there that
9 I simply don't have, but I don't see how you can change
10 the nature of trees that much on somewhat more
11 impoverished soil than was originally the case.
12 They're going to grow in about a third of the time.

13 So that's his answer and maybe there is
14 something behind it, but I don't see it as being a
15 satisfactory answer.

16 Q. In the previous three paragraphs under
17 the heading small Roman numeral (ii) Mr. Pyzer
18 discussed your concerns with regard to five species of
19 plants, and then he indicates in the third paragraph of
20 the page:

21 "We are of the opinion that the areas of
22 concern as required by existing
23 environmental protection guidelines and
24 the aesthetics skyline reserves as shown
25 on the attached map will provide the

1 necessary protection for these plants
2 within your immediate area."

3 Do you agree that those provisions will protect these
4 plants?

5 A. Well, I don't believe they will
6 because the greater rattlesnake plantain and the white
7 bog orchard were only found by my wife and myself in
8 areas which are marked to be cut, we didn't find them
9 in any of the reserves.

10 Now that is -- we couldn't make an
11 exhaustive research because these are small plants and
12 there is a lot of area; on the other hand, we did
13 search as much of the time, if not a little more, in
14 the no-cut reserves and even our own property than --
15 we searched more there than in the cut area, and we
16 didn't find them.

17 So that clearly the few examples of these
18 species that we did find will be destroyed in the cut
19 area.

20 Q. Now, on the next page of the letter
21 in the first paragraph Mr. Pyzer refers to the process
22 of the flagging of the cut boundaries. That's on page
23 3 in the first paragraph.

24 A. Yes.

25 Q. Now, did the cottagers attempt to

1 verify these cut lines?

2 A. Yes. I was not able to go down
3 myself, but my second son and a neighbour and several
4 others were down and they didn't have proper survey
5 equipment but they used a hundred foot rope and a
6 sighting level and they confirmed that these lines were
7 not run where they were shown to be run by the 500-foot
8 reserve or on the map.

9 And I also note that in this letter Mr.
10 Pyzer says:

11 "Difficulty marking line parallel to
12 lakeshore and property boundary some 600
13 feet back in the bush."

14 But the line is required to be about
15 1,300 feet back in the bush.

16 Now, whether he just made a mistake in
17 the letter or whether the technicians were directed to
18 run a line 600 feet back in the bush is not clear by
19 his letter. You would think that he directed them to
20 run a line 600 feet back and so, naturally, if that
21 were the case, they would run it too close.

22 In fact it was back more than 600 feet
23 most of the places but not in every place, particularly
24 close to the spring, it was between 500 and 600 feet
25 back and, in any event, they had simply wandered

1 through the -- maybe I should not use the word
2 wandered, maybe I should use the word walked through
3 the bush and taken the line of least resistance, which
4 is natural, it's very thick bush in some places, but
5 that meant that they veered sometimes by hundreds of
6 feet from what would be the path, even if they had been
7 on the path or the correct track to start with.

8 And they, Mr. Pyzer says:

9 "A permanent reference point...", no,
10 that's the wrong line one.

11 It says somewhere that they use certain
12 land markings to work from. They never do measure
13 anything apparently with measuring instruments, so they
14 don't really know where they are marking that line and
15 the line did not come out to be marked according to
16 either the map or to the further description.

17 Q. And I take it you advised the
18 Ministry of these discrepancies in a letter of November
19 4th, 1989 which is in the materials as Appendix O?

20 A. I did.

21 Q. And can you summarize your concerns
22 from this letter, please?

23 A. Well, first of all, I was concerned
24 that the line was not back the 1,320 to 1,650 feet from
25 the shore which was shown by the map and that at one

1 point we thought then that it came within 150 feet of a
2 cottage lot.

3 Later I surveyed it with a surveying
4 instrument in the summer of 1990 and found it came
5 within 240 feet of the lot, although there was supposed
6 to be a 500-foot no-cut reserve.

7 So that the cutting then was going to
8 take place we thought -- as of November 4th, I thought
9 it was going to begin about mid-December; in other
10 words, going to start in about five weeks, and here was
11 the line marked on the site for cutting by the licensee
12 and marked in the wrong place.

13 So I was quite concerned about that and
14 and I drew it to his attention as strongly as I could
15 for that reason.

16 Q. Now, on page 2 of this November 4th
17 letter in the second paragraph you refer again to your
18 concerns with regard to the spring.

19 A. Yes.

20 Q. Now, can you explain for the Board
21 whether the projected cut in fact planned to protect
22 the spring or not?

23 A. Well, I don't think so. As a matter
24 of fact, it appears to me that there is a particular
25 choice of cutting line to harvest the large trees which

1 are in the valley, the ravine, and close to the ravine
2 feeding the spring because there is more moisture there
3 there have been bigger trees grow there and those will
4 have more value, and so they have brought the cut area
5 closer to the lake in that spring drainage area than at
6 any other point near the cottages.

7 And so rather than stay back from the
8 spring in order to protect it, they have actually come
9 up closer to the lake and infringed more on the area
10 than otherwise. I think it must be because of the
11 value of those trees that are desirable to them.

12 I make the point that it comes within
13 about 500 feet of the spring, and I made the point
14 earlier that the actual cut line cuts across the ravine
15 below the retaining pond some, I think about 200
16 feet -- 150 or 200 feet below the retaining pond.

17 Q. Now, you refer in the letter as well
18 to -- this is towards the bottom of the second
19 paragraph on page 2 of the letter--

20 A. Yes.

21 Q. --to the fact that:

22 "The shores of the waterway down the
23 ravine side exceed a 40 per cent slope
24 and your land guidelines provide on page
25 13 a minimum distance zone of 60 metres

1 from any such slope on the edge of a
2 waterway, yet you are proposing to cut
3 trees right within the ravine or riverbed
4 of the waterway."

5 That remains a concern; does it?

6 A. Well it does, yes, because here is
7 one place where I have written standards for the
8 cutting and timber harvesting by the Ministry of
9 Natural Resources. In most places I didn't have any
10 written standards, but here I have written standards as
11 to what they will do and what they will not do.

12 Here is a waterway very clearly marked,
13 you couldn't call it anything but a waterway, it flows
14 very heavily in the spring but it does flow year round
15 and it flows at -- probably even in the dry end of July
16 it will flow at maybe 50 or a hundred cubic feet a
17 minute, not a big flow but there's a steady flow. I
18 judge that that then is a waterway.

19 The banks, it's a depth of 12 feet, it's
20 a width of 20 feet. To my mind that is definitely a
21 waterway. The slope of those banks is in excess of 40
22 feet, they're really precipitous.

23 Q. 40 feet or 40 per cent?

24 A. 40 degrees. Excuse me, 40 degrees.

25 And so under those standards of cutting, they should be

1 back 60 metres or something like 190, 200 feet, but
2 instead of that they not only don't leave a no-cut zone
3 on each side of the waterway, they actually run the cut
4 line right through the waterway and are intending
5 apparently to cut up -- right up through the waterway
6 wherever the trees may be close to the waterway.

7 Q. Dr. Henderson, you're a professional
8 engineer. Have you ever studied hydrology?

9 A. I have taken a course in that. I
10 don't pretend to be expert in and it's a very long time
11 ago. I think I have the rudiments of it and I suppose
12 that everybody knows that the flow of water is
13 generally determined by the height of the head of water
14 that then creates energy by flow.

15 Q. Now, you got into quite a debate
16 then; did you not, with the Ministry of Natural
17 Resources and the Ministry of Environment with regard
18 to the protection of this stream; is that correct?

19 A. Yes.

20 Q. And that's reflected in the
21 correspondence, Appendix R, which is another letter
22 from Mr. Pyzer to Mr. Henderson, and then Appendix S a
23 letter from Mr. Neary of the Ministry of Environment to
24 Dr. Henderson with regard to this stream.

25 Now, were you satisfied with the

1 information contained in these letters that your
2 concerns with regard to the stream were being
3 addressed?

4 A. Well, I wasn't and the reason is,
5 again, that there is no reference to the careful
6 evidence which I presented to them as to the topography
7 and the geography of the drainage basin, nor is there
8 any reference to the head of water which I indicated
9 was provided by the retaining -- intermediate retaining
10 pond, there are just bland statements that the flow may
11 change for a while and then it will be all right.

12 It seems to me that if I have, to the
13 best of my ability, provided specific evidence and in
14 fact had provided a photograph to them of the spot with
15 a man marked-up map as to how it flowed, that it was
16 incumbent upon them to refer to the evidence which I
17 provided and they may have wished, or in their
18 knowledge, their greater knowledge have denied that the
19 evidence would work the way I thought.

20 But they don't do that, they just say:
21 Oh, it will work out, the water flow will be down a bit
22 and then it will be up.

23 Now, what they don't deal with though is
24 that the surface flow is likely to be much greater
25 because the tree coverage is not there to hold it in

1 the roots and in the trees and the leaves and so on,
2 but the infiltration will not be as great.

3 And the infiltration into the sand, in my
4 opinion, is what must provide the head of water that
5 allows the spring to flow year around and it's that
6 retaining pond with the infiltration of water
7 throughout that sand bank leading down to the spring
8 that allows the water to flow.

9 Now, I think that if the water flows off
10 the surface very quickly, which it will, No. 1, it is
11 likely to erode the ravine; No. 2, it won't infiltrate
12 and, therefore, it won't be there in the sand to flow
13 back up through the wooden barrel, the wooden oak
14 barrel which we have for the spring to collect the flow
15 of water from the sand because the head of water isn't
16 there.

17 This opinion was later reinforced by a
18 letter from Dr. J. Arthur Hobbs who has been a
19 specialist in this area for a matter of 50 years and --

20 Q. Now, Dr. Henderson--

21 A. Yes.

22 Q. --this correspondence is found in
23 Appendix T; is that correct?

24 A. That's correct. I'm sorry if I
25 hurried that.

1 Q. Yes, that's fine. Yes. Will you
2 now -- are you personally acquainted with Dr. Hobbs?

3 A. Oh, I've known Dr. Hobbs very well
4 since 1930 and Dr. Hobbs is the author of Soil and
5 Water Conservation for Productivity and Environmental
6 Protection published by Prentice Hall now going into
7 its 7th edition, an edition that he's currently
8 preparing.

9 Dr. Hobbs has been asked to consult in
10 many countries in Africa, some countries in Asia and
11 has spent, in fact, months and months at a time in
12 those countries advising them how to protect their
13 spring water resources and their soil and how to get
14 productivity and steady flow from their springs.

15 He's written many professional papers on
16 the subject and presented them and had them published
17 as well as writing the textbook on the subject.

18 Q. Okay. Now, in his letter to the
19 Minister Lynn McLeod of January 26th, 1990, which is
20 the second page of Appendix T, he says in the third
21 paragraph:

22 "What Mr. Neary says in his letter is
23 correct. When vegetation is removed from
24 a watershed runoff increases often
25 dramatically. What he didn't say was

1 that this always is the result of an
2 equally dramatic decrease in
3 infiltration. The latter reduces the
4 rate and amount of groundwater recharge.

5 "It is the groundwater that concerns
6 us. Decreased groundwater recharge in
7 the spring's watershed and we lose spring
8 flow."

9 Does that summarize your concerns with
10 regard to the spring?

11 A. Yes. He puts it better than I and I
12 never put it in those terms. My mental image of it was
13 that I didn't have the experience to put it in those
14 particular terms.

15 Q. Now, in Appendix U in the witness
16 statement we see that on January 5th, 1990, which is
17 some three years after you initially raised your
18 concerns, you wrote to the Minister of Natural
19 Resources to ask for a moratorium on cutting in block
20 9?

21 A. Yes.

22 Q. And then we see in Appendix V that on
23 January 12th, a week later, you received notice that
24 block 9 and 10 had been approved for harvesting in
25 1990-91?

1 A. Yes.

2 Q. And we see on page 3, the first
3 paragraph of that appendix a letter from Mr. Pyzer:

4 "In closing, I feel that over the past
5 several years every effort has been made
6 to address the various stated concerns
7 regarding the impacts of forest
8 operations in the area of Cash Lake.

9 "For this reason I have approved plans
10 for forest operations in blocks 9 and 10
11 with modifications to the areas of
12 concern for inclusion in the Aulneau
13 Timber Management Plan for the term
14 1986-91."

15 Now, when was block 10 cut?

16 A. Block 10 was cut during the winter of
17 1989- 90.

18 Q. And when was block 9 cut?

19 A. Block 9 has not yet been wholly cut
20 but part of it was cut during the winter of 1990-1991,
21 during the months of January, February and part of
22 March.

23 Q. Now, did you inspect the cut-over of
24 block 10?

25 A. I did.

1 Q. And what did -- when did you do that?

2 A. I did that in both June and July of
3 1990.

4 Q. And what did you observe?

5 A. Well, it appeared to be a sand desert
6 to me in June and the operation had not only harvested
7 the trees, but it had bulldozed a clearcut area which
8 was, I believe, several hundred acres. I didn't scale
9 it, but it -- by bulldozed, I mean they had taken, --
10 taken a bulldozer and scraped apparently all the
11 topsoil and all the shrubbery and all the other plant
12 species off and put them in piles, I guess for burning,
13 and it was just a barren sand and mud desert.

14 In addition, they had prepared the road
15 which was going to cross Caribou Lake into block 9 and
16 they had chosen a spot which was crossed by a stream
17 and was part of a stream bed running into Caribou, and
18 as it turned out, the day that I could get there was a
19 day of heavy rain and the amount of water running down
20 that road was eroding the sand and the topsoil there
21 was into Caribou Lake at a very great rate, you could
22 see a cloud of sediment for some feet away from the
23 shore where that water came into the lake.

24 Q. Now, in Appendix X we see a response
25 to you from the Minister Lynn McLeod dated March 26,

1 1990. Are you satisfied with the reason she states for
2 refusing your request for a moratorium?

3 A. Well, no, because the definition of
4 rare species, for example, doesn't seem to me to be
5 quite the right one and, in any event, time had not
6 been taken for the MNR to try to confirm our findings,
7 my findings of the orchids.

8 And so that this is now March 26th, is
9 almost three years after my original letter of 1987 and
10 no effort had been made to find out whether they're
11 there and what the importance was of them.

12 I suppose it depends upon the definition
13 of rare. I still consider them to be rare and I
14 believe that it has been shown that the greater
15 rattlesnake plantain has not been discovered between
16 Saskatchewan and Thunder Bay previously, and so that to
17 that extent it is rare, and the white bog orchid had
18 not been discovered in that area of Ontario before, so
19 that it wasn't quite as rare as the greater rattlesnake
20 plantain but nevertheless relatively rare.

21 If those definitions had been put in here
22 and some reasoning, then I would be maybe somewhat more
23 satisfied, but there seems to be a continuing habit to
24 ignore the specific evidence which I present and a
25 broad bland statement saying: Oh well, we have taken

1 care of it.

2 I don't have as many means to gather good
3 sound evidence as the departments of the Ontario
4 government do have, and I think that where I have gone
5 to considerable trouble to present accurate and
6 - specific evidence, that in order to deal with the reply
7 it's necessary for them to deal with the exact evidence
8 and state how -- why they disagree with me on that
9 evidence.

10 Q. Now, at some point in this process
11 did the Farlane Environmental Protection Association
12 ask for a designation to bump-up of this timber
13 management plan?

14 A. Yes. I believe it was about
15 mid-November, 1989 about November 15th.

16 Q. And are you personally aware of how
17 that request has been dealt with?

18 A. It's come to me in a round about way
19 really in that at the time of early December when there
20 was an effort made to start cutting in block 10,
21 apparently the cutting contractor Mr. Ed Wilson did not
22 have another area in which to cut, and I judged from
23 the correspondence made available to me that there was
24 considerable telephone and letter correspondence
25 between Kenora MNR and the offices of the Ministry of

1 the Environment and MNR in Toronto in order to break
2 that moratorium on cutting.

3 In effect on December 7th, in reading the
4 correspondence of the MNR, the permission apparently
5 was given to cut block 10 and, therefore, I think that
6 really the bump-up provision was decided against at
7 that time by the Ministry of the Environment, as far as
8 I can interpret that correspondence.

9 Q. Now, have you had an opportunity to
10 examine documentation relating to a minor amendment to
11 this timber management plan?

12 A. I have, yes.

13 MS. SWENARCHUK: I would like to make
14 this the next exhibit then, Madam Chair.

15 MADAM CHAIR: This will be Exhibit 1801.

16 MS. SWENARCHUK: I'm going to file a
17 two-page excerpt of a MNR document entitled: Minor
18 Amendment to an Approved Timber Management Plan and
19 it's for the 1986-1991 Aulneau Timber Management Plan,
20 it's a Cash Lake amendment. (handed)

21 This is 1801; is that right, Madam Chair?

22 MADAM CHAIR: That's right.

23 ---EXHIBIT NO. 1801: 2-page excerpt of MNR document
24 entitled: Minor Amendment to an Approved
25 Timber Management Plan, 1986-1991
Aulneau Timber Management Plan, Cash
Lake amendment.

1 MS. SWENARCHUK: Q. Now, we have, as
2 part of the two-page excerpt, page 3 of the supplement
3 to the Aulneau Timber Management Plan, the Summary of
4 Public Review and Mitigation Action, Cash Lake blocks 9
5 and 10.

6 And in the excerpts that I've provided,
7 Dr. Henderson, would you please look at the second last
8 paragraph on the page with regard to the spring located
9 on the shore of Cash Lake, and I would like to direct
10 your attention to the last sentence of that paragraph
11 which indicates:

12 "MOE's letter did not recommend any
13 change in our present plan to log in the
14 area since such a recommendation would
15 clearly indicate that forest operations
16 would not be possible in Ontario."

17 Now, are you aware of any reason why
18 accommodation of your concern on this spring would make
19 forest operations impossible in Ontario?

20 A. Well, I can't understand that. And
21 reading it, it seemed to me almost that the Ministry of
22 Environment was persuaded to say that it was all right
23 to log there because for some reason Ministry Ministry
24 of Natural Resources had told them that they wouldn't
25 be able to log if Ministry of Environment said that

1 they would be -- should be prevented from cutting
2 around the spring.

3 I can't understand why that would be.
4 The area that we're talking about, and we've been
5 trying to ask the Ministry of Natural Environment not
6 to cut, is probably on the order of five hectares,
7 maybe as large as 10 hectares, not a very large area,
8 and yet they say that if they recommend that that not
9 be cut then there couldn't be any logging in Ontario.
10 It doesn't make any sense to me.

11 Q. Now, I want to turn briefly to the
12 question of preparation of the 1991-2011 timber
13 management plan for the area.

14 A. Yes.

15 Q. And I believe that in Appendix Y in
16 the materials we see an invitation to participate in
17 this planning exercise sent to you from Mr. Pyzer.

18 A. Yes.

19 Q. And your response in Appendix Z of
20 the materials and you set out a number of issues which
21 you're bringing to their attention.

22 A. Mm-hmm.

23 Q. Can you just indicate, is it your
24 opinion that baseline inventory for non-timber
25 resources is important in your area of the country?

1 A. Well, yes. I go back to my earlier
2 statement that this is an ecological system which I
3 don't think is well understood and that the areas are
4 different and this area is different from others,
5 although it will have many similarities, and the only
6 way to understand what changes are being made to that
7 system by such a large intrusion as clearcut logging is
8 to get some data before and then collect data on the
9 same variables later and make comparisons.

10 Now, I didn't intend or try to set out
11 the numbers of times this data should be collected or
12 the time periods at which it should be collected, but
13 here we are changing the environment very, very
14 drastically by cutting all the trees in a very large
15 area and these thousands of other plant species are
16 affected, the many hundreds of bird species are
17 affected, certainly the soil and the water quality is
18 affected, and no measures apparently are taken of those
19 before or after to find out what the effect was.

20 I was asked courteously for what I
21 thought could and should be done and so I replied.
22 Now, it certainly doesn't mean that the Ministry is
23 automatically and immediately going to set out to do
24 each of these studies, but for the purpose of
25 understanding what I think -- that this is what I

1 think, and so I submitted these ideas to them. They
2 are comprehensive, as well as I can make them, and so I
3 submitted them for consideration.

4 Q. Now, I would like to turn finally to
5 page 15 of your witness statement and paragraph 35.
6 And you've indicated there that:

7 "During the past three years I have
8 attempted to express my concerns about
9 timber management activities in the Cash
10 Lake area to the MNR. I have found that
11 MNR staff will politely listen to my
12 concerns but they have not, in the my
13 opinion, responded adequately to the
14 numerous concerns raised by myself and
15 other Cash Lake cottagers.

16 "It is my opinion that the MNR is
17 opposed to making any changes to any of
18 its timber management proposals on any
19 grounds and, in fact, the MNR has made
20 virtually no change in its timber
21 management proposals for the Cash Lake
22 area.

23 "I am completely dissatisfied with
24 the timber management planning process
25 and I am not inclined to continue to

1 participate in this process unless
2 changes are made to the cutting plan to
3 protect the non-timber values I have
4 identified."

5 Do you continue to hold those views?

6 A. Yes. I use the word not inclined and
7 I find it unsatisfactory. I don't say that I won't,
8 because I think that if I can be of value or aid, then
9 I should, but I am not inclined to because it doesn't
10 seem that my efforts, and it does take quite a bit of
11 effort to get this correspondence ready, to gather the
12 data and so on, it does take quite a bit of effort, if
13 there's going to be no result, then why should I bother
14 myself and others with it.

15 If it's useful and if it can lead to a
16 better result, then as a citizen I should do that, but
17 to date it seems to have led to virtually no change.
18 If we had -- if I had never heard of the timber
19 management plan and had never written a letter it would
20 have come out just about the same as now.

21 And as recently as last night my second
22 son phoned me and said that the road which I referred
23 to earlier leading into Caribou Lake had apparently
24 been eroded by a lot of soil, that a lot of soil had
25 eroded with deep ditches, and it wasn't until Mr. Ed

1 Duvall phoned the Ontario government that they weren't
2 interested in doing anything about it, he got in touch
3 with federal government - and whether that was the
4 cause or not - anyway, in about a week the road was
5 protected with a berm and bulldozing.

6 Now, that may or may not have been the
7 cause, maybe they were going to do it anyway, and this
8 is hearsay to me, though my son has always been
9 accurate in his statements to me.

10 But it seems as if this just goes on in
11 the old operating way of the 1920s where you go into
12 the forest and chop it down with bigger and better
13 machines and change is not readily forthcoming.

14 So I suppose one shouldn't be as
15 pessimistic as that statement indicates, I suppose one
16 should try to be optimistic and other people have heavy
17 duties to carry on and there are many things they have
18 to do, but I'm concerned about the environment. I
19 think that we as a species, homosapiens, may be in
20 serious trouble on this planet and we may ruin what
21 keeps us alive.

22 It's only plants that allow us to stay
23 alive, and my judgment may not be as good as it should
24 be but, nevertheless, I'm concerned about it and that's
25 why I made that statement in No. 35.

1 Q. Now, finally would you support terms
2 and conditions requesting that this Board require the
3 MNR to improve public notice and consultation--

4 A. Yes.

5 Q. --with regard to timber management?

6 A. In spite of saying I'm not inclined
7 to participate, maybe if the procedure was changed and
8 it could be done better. So, yes, I do.

9 Q. And would you support a requirement
10 that the Ministry inventory or field survey both timber
11 and non-timber values in areas eligible for harvest?

12 A. I certainly do, yes.

13 Q. And would you support a requirement
14 for public lay membership on timber management planning
15 teams?

16 A. Yes, I would. The people who have
17 one job to do will be very inclined to do that job
18 thoroughly and well and to neglect others, and so you
19 need the other point of view, I think, to see the
20 broader parts of the system.

21 MS. SWENARCHUK: Thank you. Those are my
22 questions of Dr. Henderson, Madam Chair.

23 MADAM CHAIR: Thank you very much, Ms.
24 Swenarchuk.

25 Mr. Cassidy?

1 MR. CASSIDY: Yes, thank you, Madam
2 Chair.

3 CROSS-EXAMINATION BY MR. CASSIDY:

4 Q. Dr. Henderson, just so I can be clear
5 Cash Lake, where your cottage is--

6 A. Yes.

7 Q. --is in the Aulneau Crown Management
8 Unit; is that correct?

9 A. That's correct. I could help with
10 the map, Mr. Cassidy. Would that help you?

11 Q. No, that's fine, I just want to make
12 sure whether it's in the crown management unit or not?

13 A. Yes. It's now been changed -- the
14 Aulneau Crown Management Unit and the Minaki Crown
15 Management Unit, I'm advised by Mr. Pyzer, were
16 amalgamated to become the Kenora Crown Management Unit.

17 Q. Okay. Can I go to Appendix I of your
18 source book.

19 A. Yes.

20 Q. Which is Exhibit 1434.

21 A. Exhibit I is the letter of Mr. Pyzer
22 dated September 29th, is that the one you're referring
23 to?

24 Q. No.. I thought I was referring to a
25 letter dated June 14th, 1988 to you from Mr. Pyzer. I

1 believe it attaches - I may be wrong, sir - but I
2 believe it attaches the harvest and silvicultural
3 proposals for blocks 9 and 10.

4 A. Oh, all right. I'm sorry, yes.

5 Q. Can we go to page 2 of those
6 silvicultural proposals.

7 A. Page 2. Yes, sir,

8 MR. CASSIDY: Does the Board have that?

9 MADAM CHAIR: Yes, we do, Mr. Cassidy.

10 MR. CASSIDY: Q. If I can take you to
11 the portion of that last paragraph, and I think you
12 were talking about the removal or the logging in that
13 reserve area.

14 Is it your impression, sir, that that
15 logging will be clearcut logging?

16 A. No, it's not.

17 Q. So it's selection cut logging; is
18 that your impression?

19 A. If it were to be done in the reserve
20 area, it's worded here as to be selective cutting of
21 individual full trees and removal of individual full
22 trees.

23 That was my understanding of that. Not
24 that I'm in favour of it, you understand, but that's my
25 interpretation of that sentence.

1 Q. I just wanted to make sure whether
2 you were under the impression it was selection cut, it
3 is not clearcut that is proposed there.

4 A. No, selective cutting.

5 Q. Now, if I can take you -- first of
6 all, you're not forester; is that right?

7 A. I'm not a forester, that's right.

8 Q. And you're not biologist?

9 A. I'm not biologist, that's right.

10 Q. If I can take you to Appendix E.

11 MS. SWENARCHUK: E as in egg, Mr.

12 Cassidy?

13 MR. CASSIDY: That's right, E as...

14 Q. Which I believe is the field
15 environmental planning procedure for the Caution Lake
16 Road.

17 A. Yes.

18 Q. And you were referring to a portion
19 of -- in the course of your evidence you were referring
20 to a meeting on May 9th, 1987 that Mr. Pyzer had with
21 the cottagers.

22 A. Yes.

23 Q. And you heard him talking about a lot
24 of issues relating to fighting forest fires.

25 A. Yes.

1 Q. Now, I want to take you to that first
2 page of Appendix E and you'll see in the last full
3 paragraph there, the part that starts "fully
4 utilization of potentially accessible timber", the next
5 sentence states:

6 "The disastrous fires of 1980 and 1983
7 have greatly reduced Kenora District's
8 wood supply. Improved forest access is
9 presently required to maintain a
10 continous wood supply to operators in the
11 unit who supply the Boise mills or
12 sawmills in the area."

13 Now, I am not sure when this Appendix E
14 was written, but did Mr. Pyzer talk about that issue--

15 A. Oh yes.

16 Q. --in the meeting on May 9th, 1987?

17 A. Yes. In fact, I think he made the
18 statement that more wood is burnt than harvested,
19 something of that nature, and that as a result the
20 area -- the district was very short of harvestable
21 wood.

22 Q. A tight wood supply?

23 A. Yes.

24 Q. Okay. Just a couple of final
25 questions. Your family has been on Cash Lake for 61

1 years?

2 A. Yes.

3 Q. What's the kind of sewage systems
4 that the cottagers on that lake use; do you know?

5 A. Outside privies with just a hole dug,
6 but most new use a bacterial material which digests the
7 sewage in the privy.

8 Q. Are you aware of any concerns that
9 have been raised about possible sewage contamination of
10 Cash Lake?

11 A. Yes, that's right, and we've been
12 concerned about that, but that's why when these
13 compounds became available for the digestion of the
14 sewage, we have been and several others have been using
15 it, I'm not sure if everybody is, and our privy is back
16 about a little over 200 feet from the lake, which we
17 think is adequate.

18 I spoke to Art Sparling who is a
19 Professor of civil engineering at the University of
20 Manitoba who specializes in sewage and asked him about
21 it and we asked Phil Lansdowne a professor of civil
22 engineering at the University of Manitoba who has a
23 cottage on Star Lake and wondered about that, and I'm
24 still not positive that we're okay, but we have done
25 what we think we can to deal with it.

1 Q. Is it fair to say that it's a source
2 of ongoing concern for you, the potential contamination
3 or--

4 A. The potential, yes.

5 Q. --the effect on water quality--

6 A. Yes.

7 Q. --from the sewage systems?

8 A. Yes, that's right. And we think we
9 have taken action and certainly are willing to take
10 further action if it's -- if we can see what we can do
11 or if it's necessary.

12 Q. And just a last question in respect
13 of the question your counsel just asked you about
14 participating on the planning team. You would like
15 that participation to be preferably before the plans
16 are even formulated so you have input into what goes
17 into those plans; is that fair to say?

18 A. Yes.

19 Q. And would you see that as an ongoing
20 involvement, not just once that the plan is completed,
21 but an ongoing involvement in the way that the plan is
22 carried out?

23 A. Well, I think, yes. I suspect that
24 we're at a transitional point here and that there will
25 be a set of much more specific rules generated in the

1 next maybe two, five or 10 years and subsequent to that
2 there are likely to be fewer points of disagreement
3 between the various parties.

4 Certainly during that transitional period
5 I think that there needs to be considerable input from
6 people with all points of view, but that subsequently
7 the apparent differences may disappear and so there may
8 be a lack of need for that.

9 Q. Do you see a situation that could
10 arise where you are involved in the stages before the
11 production of the plan, in the actual production of the
12 plan, that the work that you may be required from the
13 citizen of your viewpoint, from your perspective could
14 potentially be less because there might potentially be
15 less conflicts, given that you're involved earlier in
16 the stage?

17 A. Well, the objective, I assume, would
18 be to build a consensus and if the concerns of people
19 like me with my interest and the people with other
20 interests could truly be resolved, then it wouldn't be
21 discussed afterwards.

22 Now, prior to any consensus it appears
23 difficult to the people like me and to you to
24 understand how a consensus -- what should the census
25 be, how it will be arrived at, what will it look like.

1 But in the history of mankind there have
2 been many agreements reached and people, as a whole,
3 accept them and then the contention has passed. During
4 that period of resolution and agreement and achievement
5 of consensus, clearly there can be some strong
6 differences of opinion until you may be innovative or
7 find a way where you can operate with everybodys'
8 satisfaction.

9 Q. And for everybody to be satisified it
10 may be a requirement that not everyone gets everything
11 they want, they may get a little bit less than what
12 they want?

13 A. That's usually the case.

14 MR. CASSIDY: I have no further
15 questions, Madam Chair.

16 MADAM CHAIR: Thank you, Mr. Cassidy
17 Ms Seaborn?

18 MS. SEABORN: Thank you, Madam Chair.

19 CROSS-EXAMINATION BY MS. SEABORN:

20 Q. Good morning, Dr. Henderson. My
21 name is Jan Seaborn and I'm counsel for the Ministry of
22 the Environment.

23 A. Good morning, Ms. Seaborn.

24 Q. During your direct testimony, Dr.
25 Henderson, you made reference to correspondence that

1 you received from Mr. Neary of the Ministry of the
2 Environment and that correspondence has been filed in
3 your appendices as Appendix S?

4 A. Yes.

5 Q. And that is Mr. Neary's letter to you
6 of December 7th, 1989?

7 A. Yes.

8 Q. And as I understand the chronology,
9 that was a response to your letter of November 20th,
10 1989 which is also filed?

11 A. Which was addressed to Mr. Bisschop,
12 I believe, was it?

13 Q. Yes.

14 A. Yes.

15 Q. And now, if we could just turn to Mr.
16 Neary's response for a moment -- and that, Madam Chair,
17 is at Appendix S.

18 In the first paragraph Mr. Neary states
19 partway down the paragraph that he has been involved
20 with the development of timber management guidelines
21 which regulate cutting near waterbodies, and:

22 "...I am familiar with much of the
23 literature which concerns the effects
24 of timber management activities on water
25 quality and quantity."

1 Now, you don't have any reason to dispute
2 that; do you, in terms of Mr. Neary's credentials and
3 knowledge of timber management activities?

4 A. Well, I have no information about Mr.
5 Neary, I don't know what education he has or what
6 experience, I have to accept what statement he makes in
7 the letter until shown otherwise.

8 As I suggested in my earlier testimony,
9 I'm having difficulty understanding why the statements
10 of Dr. Hobbs, who clearly is a very senior expert in
11 the area, would not agree with those of Mr. Neary.

12 Q. What I'm asking you to confirm for me
13 is that you don't have any information to present to
14 the Board today that would challenge Mr. Neary's
15 credentials?

16 I understand that you have put forward
17 information in terms of letters about Professor Hobbs'
18 credentials, but you don't have any information to
19 challenge Mr. Neary's credentials?

20 A. I didn't attempt to do so, I wouldn't
21 like to do so in any event, and I merely have looked at
22 his response and wondered why there should be so much
23 difference from Dr. Hobbs.

24 Q. Now, I understand that from reviewing
25 the correspondence that you and Dr. Hobbs may disagree

1 with the conclusions that Mr. Neary reached. Would you
2 agree with me that in his response to you he does
3 attempt to address the issues of quality and quantity
4 of runoff from a watershed?

5 A. Well, he does. But, Ms. Seaborn, he
6 doesn't deal with the evidence that I presented to him,
7 he doesn't deal with the ravine, he doesn't deal with
8 the intermediate retaining pond, he doesn't deal with
9 the infiltration and the head of water that is
10 necessary to keep a flow going, and he ignores all
11 those specific points that I presented.

12 And so the response, to my point of view,
13 it may be a final opinion of his, but it doesn't show
14 how he arrived at that in light of the evidence I've
15 supplied to him.

16 Q. You would agree with me though that
17 Mr. Neary does address the issues of quality of runoff
18 from a watershed and quantity of runoff from a
19 watershed and that you have no information as to what
20 literature or documents he reviewed in preparing this
21 response?

22 A. I don't have. He didn't give me that
23 bibliography.

24 Q. Okay.

25 A. But also I note he's talking about

1 runoff and not infiltration.

2 Q. I understand that you've raised that
3 concern.

4 Now, Dr. Henderson, would you agree that
5 experts can often disagree on issues when they're
6 evaluating matters within their area of expertise?
7 It's not unusual for two experts to come to different
8 conclusions?

9 A. Well, it's not, but in my experience
10 the only way you can determine which expert is closest
11 to the truth is by having each of them deal with the
12 same evidence.

13 Q. Okay.

14 A. In other words, you start with the
15 evidence and then you understand how each of them views
16 that evidence and what concepts and theories they apply
17 to that evidence in order to arrive at their final
18 conclusion.

19 The mere stating of a final conclusion,
20 to my mind, has never been a satisfactory way to
21 examine whether an expert -- which one of the experts
22 is right or wrong.

23 Q. And I think you agreed with me that
24 you're not aware of what literature or documents Mr.
25 Neary may have reviewed to come to his conclusion;

1 you're just not aware of that?

2 A. I'm not aware, no.

3 Q. Okay.

4 A. I would be curious to understand --
5 to know whether he had reviewed Dr. Hobbs' book.

6 Q. And you're not a soils or a water
7 quality expert; are you, Dr. Henderson?

8 A. I'm not.

9 Q. And I take it that you have relied on
10 Dr. Hobbs' opinion in relation to the potential adverse
11 effects of timber management on the spring?

12 A. Well, oddly enough I had not
13 discussed this with Dr. Hobbs until probably November,
14 1989 after I had written most of my letters, and I
15 wrote most of those letters just on my own
16 understanding of how water flow and hydrology works.

17 It turned out that Dr. Hobbs came upon
18 Mr. Neary's letter to me as a result of Mr. Pyzer
19 distributing that to all of the Cash Lake campers by
20 mail.

21 Q. I recall --

22 A. That is how he got it, and Dr. Hobbs
23 and I had not discussed my correspondence that led up
24 to Mr. Neary's letter up until that time.

25 It wasn't until he received Mr. Neary's

1 letter from Mr. Pyzer that we then discussed it.

2 Q. And that is the evidence that you
3 referred to in your witness statement where I believe
4 it was at a cottagers' association meeting you had
5 where you first had some discussions with Professor
6 Hobbs?

7 A. Yes, we didn't happen to talk about a
8 spring though. We talked about the spring on the
9 telephone after he received Mr. Neary's letter.

10 Q. Okay. Now, in your testimony you
11 also referred to Appendix T which is Professor's Hobbs'
12 letters to Mr. Bradley and Ms. McLeod.

13 A. Yes.

14 Q. And if we could just turn to the
15 second letter, which is the letter to the Honorable Lyn
16 McLeod.

17 A. Yes.

18 Q. And in that letter, the third
19 paragraph, Professor Hobbs says:

20 "What Mr. Neary says in his letter is
21 correct. When vegetation is removed from
22 a watershed runoff increases often
23 dramatically."

24 So they agreed on that point?

25 A. Yes.

1 Q. And then Professor Hobbs goes on to
2 say:

3 "What he didn't say was that this always
4 is the result of an equally dramatic
5 decrease in infiltration. The latter
6 reduces the rate and amount of
7 groundwater recharge. It is the
8 groundwater that concerns us. Decreased
9 groundwater recharge in the spring's
10 watershed can reduce spring flow."

11 Now, it's my information in reviewing in
12 this matter from Mr. Neary that in his view Professor
13 Hobbs is incorrect in his assertion that the increase
14 in watershed yield is due to a dramatic decrease in
15 infiltration.

16 Mr. Neary advises me that Professor Hobbs
17 may be used to dealing with agricultural soils where
18 infiltration rates are often limiting and may result in
19 overland flow.

20 Mr. Neary goes on to tell me that, to the
21 best of my knowledge, this is not the case for forest
22 soils. These soils are typified by surface organic
23 layers which have large infiltration rates.

24 Now, you don't have any information at
25 this point to dispute what my information is as to Mr.

1 Neary's opinion?

2 A. Dr. Hobbs said to me after -- or
3 about the time of these letters, I say December, '89 or
4 January, 1990, that the infiltration in that area would
5 not occur at anywhere near the rate that it did before
6 the cutting because the surface flow of the water --
7 there's only a discrete amount of water that falls as
8 rain, that either has to go as surface flow or
9 infiltration. If you increase the surface flow, the
10 infiltration has to be reduced by the same amount.

11 Q. And my point, Dr. Henderson, is that
12 Dr. Neary has a conclusion which is different from
13 Professor Hobbs, and all I'm suggesting to you is that
14 today in front of the Board we don't have Professor
15 Hobbs - I may have to call Mr. Neary later in this
16 hearing to give testimony on this issue - but we have
17 two experts who disagree.

18 A. Well, you're inferring that Dr. Hobbs
19 doesn't know the nature of the soil in that area and
20 Dr. Hobbs has spent many, many hours digging with a
21 shovel in that area and knows the soil, and he also
22 knows the nature of the soil and has written papers on
23 it.

24 I would think that his knowledge of that
25 soil would be full; on the other hand, I can't give his

1 references either.

2 Q. Exactly.

3 A. If that's the point you're making.

4 Q. The simple point I'm trying to make
5 is that we don't have Professor Hobbs here to hear his
6 views fully, and it's my information from Mr. Neary
7 that he takes issue with the conclusions reached by
8 Professor Hobbs.

9 And would you agree with me that it's not
10 unreasonable for people to come to opposite conclusions
11 on issues such as these, or perhaps not unusual?

12 A. I think there are many issues that
13 there can be disagreement on.

14 I find trouble understanding how Mr.
15 Neary could say that there would be as much
16 infiltration when there is more surface flow. The two
17 have to add up.

18 Q. Well, I think, Dr. Henderson, I can't
19 speak for Mr. Neary and probably what we will have to
20 do is some point in this hearing is hear from Mr. Neary
21 on that matter, because he certainly has some views as
22 to this particular issue.

23 A. Well, I would hold by agreement then
24 until I would hear what his views are.

25 MS. SEABORN: Okay. I think we've

1 explored that issue long enough, Madam Chair, thank
2 you.

3 Q. There's one other issue I wanted to
4 raise with you, Dr. Henderson. In the evidence you
5 referred to a bump-up request.

6 A. Yes.

7 Q. And am I correct that the request to
8 the Minister of the Environment for an individual
9 environmental assessment was one not made by yourself
10 but made by the Farlane Environmental Protection
11 Association?

12 A. That's right, and signed by the
13 President Mr. Peter Wintermute.

14 Q. That's correct.

15 A. Yes.

16 Q. And I understand you're a member of
17 that association but you did not initiate that request?

18 A. I did not, no.

19 MS. SEABORN: Now, Madam Chair, I would
20 like to file some recent correspondence in relation to
21 the status of this request, just so the Board is kept
22 up to date on where the matter stands and I provided a
23 copy to Ms. Swenarchuk. The first -- it's a five-page
24 exhibit, Madam Chair.

25 The first two pages is a letter to the

1 President of the Farlane Environmental Protection
2 Association from the Honorable Ruth Grier, and it is
3 dated March, 12th, 1991. (handed)

4 MADAM CHAIR: Ms. Seaborn, has Dr.
5 Henderson seen a copy of this letter?

6 MS. SEABORN: Yes, I provided the letter
7 to Ms. Swenarchuk this morning. I don't know whether
8 he had an opportunity to read it.

9 MADAM CHAIR: Did you have an opportunity
10 to read it?

11 THE WITNESS: I haven't. This is the
12 first time I've seen this.

13 MADAM CHAIR: Ms. Seaborn?

14 MS. SEABORN: Yes.

15 MADAM CHAIR: Would it be inconvenient
16 for you, I had wanted to break a few minutes before
17 noon today. Would it be inconvenient for you to pick
18 up after lunch?

19 MS. SEABORN: I only have a couple of
20 questions and so this will give the Board and Dr.
21 Henderson an opportunity to review the correspondence.

22 MADAM CHAIR: Thank you. Let's give it
23 an exhibit number. We didn't get a copy, that's right.

24 MS. SEABORN: Exhibit 1802?

25 MADAM CHAIR: 1802, that's right.

1 Could we have a copy, Ms. Seaborn?

2 MS. SEABORN: Madam Chair, I'm having
3 trouble with my stapling ability this morning. I will
4 provide it to you after lunch.

5 MADAM CHAIR: Thank you.

6 MS. SEABORN: It appears there's two of
7 the same page.

8 MR. CASSIDY: What time do we come back?

9 MADAM CHAIR: 1:30.

10 ---Luncheon adjournment at 11:58 a.m.

11 ---On resuming at 1:35 p.m.

12 MADAM CHAIR: Please be seated.

13 Ms. Seaborn?

14 MS. SEABORN: Thank you, Madam Chair.

15 Did Mr. Pascoe provide you with a copy of Exhibit 1802?

16 MADAM CHAIR: Yes.

17 MS. SEABORN: Just for the record, Madam
18 Chair, this is a five-page document.

19 The first two pages is a letter to the
20 President of the Farlane Environmental Protection
21 Association from the Honourable Ruth Grier dated March
22 12th, '91, and then attached to that is a response to
23 the Minister's letter from the President of the Farlane
24 Environmental Protection Association.

25

1 ---EXHIBIT NO. 1802: Five-page document consisting of
2 a letter to the President of the
3 Farlane Environmental Protection
4 Association from the Honourable
5 Ruth Grier dated March 12th, '91,
6 and attached a response to the
7 Minister's letter from the
8 President of the Farlane
9 Environmental Protection
10 Association.

11 MS. SEABORN: Q. Now, Dr. Henderson, had
12 you seen this correspondence or were you aware of it
13 prior to your appearance today?

14 A. No. I'm not surprised at it. I knew
15 the general point of view of Mr. Wintermute but I was
16 not aware of the particular correspondence.

17 Q. So you weren't aware that the
18 Minister had written Mr. Wintermute informing the
19 association of the work that the Environmental
20 Assessment Advisory Committee was going to be
21 undertaking?

22 A. No.

23 Q. And Mr. Wintermute has responded to
24 the Minister and reiterated on behalf of the
25 association their concerns?

26 A. Yes.

27 Q. Do you have any information as to
28 whether the association made any representations to
29 EAAC at its meetings late this winter?

1 A. I don't have any information on that
2 point, no.

3 MS. SEABORN: Thank you.

4 Madam Chair, I wanted the Board to be
5 aware of this correspondence and be aware that the
6 Minister had updated the association as to the status
7 of their designation request.

8 It's my information that EAAC has not yet
9 provided its report to the Minister in relation to the
10 designation and bump-up request.

11 You'll recall that when the witnesses for
12 Panel 2 for FFT originally appeared I had advised the
13 Board that there had been certain referrals to EAAC and
14 EAAC would be undertaking some public hearings. Those
15 have taken place and a report will apparently be
16 provided to the Minister from EAAC shortly in relation
17 to those hearings.

18 So that is as much information that I can
19 provide the Board at this time on the status of those
20 requests.

21 MADAM CHAIR: Thank you, Ms. Seaborn.

22 MR. MARTEL: Could I just ask, Dr.
23 Henderson. You asked for a bump-up, has the work
24 proceeded in the area where you requested the bump-up
25 to be?

1 THE WITNESS: The work has proceeded in
2 spite of the request for the bump-up.

3 MR. MARTEL: Yes. Well, then the whole
4 of the bump-up and what's happening now is a useless
5 exercise; is that not right?

6 THE WITNESS: Well, not entirely, but to
7 a great extent. I had made the point earlier that I
8 thought that the Minister of the Environment had really
9 given up on the bump-up on December 7th, 1989 when they
10 permitted the cutting of block 10, and that permission
11 was given, I judge, by telephone and it's referred to
12 in one of the documents that I mentioned earlier this
13 morning.

14 And my interpretation was that at that
15 point the Minister of the Environment had decided that
16 they would not do the bump-up because the practical
17 cutting of block 10 then did away with any advantage --
18 or the advantage of the environmental assessment in
19 that block.

20 Now, they've cut half of block 9, so
21 there is no benefit to that. We still have half of
22 block 9 uncut and that includes the portion around the
23 spring about which we had so much correspondence. So
24 to that extent it might still be helpful, but certainly
25 much diminished value.

1 MS. SEABORN: I think, Mr. Martel, there
2 is some dispute as to the extent and the operations
3 that may or may not have occurred in those two blocks
4 since the request was made.

5 Certainly in the correspondence filed --
6 sorry, in the letter written by the President of the
7 Farlane group he indicated that he was still asking for
8 a designation, so I would submit that there still are
9 some areas out there that operations have not occurred
10 on and the association continues to have some concerns
11 about those areas.

12 I think Ms. Blastorah is going to be
13 asking some questions in relation to some of the
14 operations, so rather than reviewing that with Dr.
15 Henderson, I think I'll finish my questions at this
16 juncture.

17 MR. MARTEL: I was just trying to get
18 some perspective how it worked.

19 MS. SEABORN: I think there is somewhat
20 of a dispute on that very point.

21 MADAM CHAIR: Thank you, Ms. Seaborn.

22 MS. SEABORN: Thank you.

23 MADAM CHAIR: Ms. Blastorah?

24 CROSS-EXAMINATION BY MS. BLASTORAH:

25 Q. Dr. Henderson, I've already indicated

1 to you that I'm Catharine Blastorah, I'm acting for the
2 Ministry of Natural Resources and I would like to ask
3 you a few questions on behalf of the Ministry.

4 A. Certainly, Ms. Blastorah.

5 Q. Now, there was some discussion during
6 your direct evidence and in your witness statement
7 about the notice that you received in relation to the
8 preparation of the Aulneau Crown Management Unit timber
9 management plan, and will you agree with me that
10 whether or not you received - whatever the original
11 notice was that was sent in relation to that plan
12 preparation - that when the Ministry learned that you
13 were interested, they did in fact contact you and
14 provide you with maps and a comment sheet in relation
15 to the preparation of that timber management plan?

16 A. The phrase, when they learned I was
17 interested, I'm not sure is accurate. When they
18 admitted that as a landowner and cottager in the area
19 that I might be interested would be closer, because
20 they didn't have any indication on February 17th, 1987
21 as to whether or not I personally was interested.

22 Q. Maybe it's a matter of semantics
23 then. Just to clarify, I meant interested as a cottage
24 owner?

25 A. Yes, all right.

1 Q. So once they learned you were a
2 cottage owner on the lake, and it's my understanding
3 that they were apprised of that by a Mr. Duvall; is
4 that correct?

5 A. Well, it was. Of course, they had
6 available to them the land titles records which list my
7 address as well as the address of all of the cottage
8 owners, and presumably they merely had to access that
9 information in order to see it in the first place.

10 Q. All right. My point being, that they
11 did in fact send you maps and a comment sheet?

12 A. Yes.

13 Q. And indicate to you that they were
14 inviting your input, notwithstanding the fact that it
15 was rather late in the process?

16 A. That's correct, yes.

17 Q. And they advised you at that time
18 that your concerns would be fully considered even
19 though the planning process was at the draft planning
20 stage?

21 A. That was the advice they gave me.

22 Q. And you'll agree with me then that in
23 the sense that you were advised your comments would be
24 fully considered that there was no prejudice from the
25 fact that you didn't receive the initial notification?

1 A. Well, that was the way the statement
2 in the letter and over telephone read, yes. Read or
3 heard, yes.

4 Q. So you did have an opportunity to
5 give your input?

6 A. Well, the actions however
7 subsequently didn't happen that way.

8 Q. Well, I'm not asking you about
9 whether or not you're satisfied with how those concerns
10 were addressed, I'm just asking you to agree that, in
11 fact, you did have an opportunity to fill out a comment
12 sheet to correspond with the Ministry and to review the
13 plan and to give some input to the plan, leaving aside
14 for now the question of how that was dealt with?

15 A. Yes. The point I was making it was
16 about the approval of the plan prior to my being
17 allowed to submit that information which we dealt with
18 this morning.

19 Q. Okay. We will come to that in a
20 moment.

21 A. Yes.

22 Q. Now, you did contact the Ministry of
23 Natural Resources by telephone as was suggested to you
24 in the letter from the district manager which has been
25 filed as Appendix A in your material?

1 A. Yes.

2 Q. And you arranged to review the draft
3 plan in the district office in April; correct?

4 A. Correct.

5 Q. And the district manager had
6 indicated to you, and I believe this was confirmed
7 during your telephone conversation, that the fact that
8 you were going to review this in April would not
9 preclude full consideration of your submissions?

10 A. That was the statement made on the
11 telephone, yes.

12 Q. Okay. Now, you've indicated that you
13 did receive a notice of plan approval in March of 1987;
14 correct?

15 A. That's correct.

16 Q. And you included that in your
17 materials?

18 A. Yes.

19 Q. Now, you'll also agree that you
20 received a letter dated March 27th which is
21 approximately eight days after the date of the notice
22 of plan approval and that letter is contained in
23 Appendix D to your material?

24 A. Yes.

25 Q. And you'll agree that that letter

1 indicates that proposals for the Cash Lake area, which
2 is blocks 9 and 10, were deferred and not included in
3 the approval that had been given? Are you aware of
4 that?

5 A. That is what the letter says, yes.

6 Q. And you'll agree that the concerns
7 that you have raised in relation to the Aulneau timber
8 management plan all relate to blocks 9 and 10?

9 A. The ones that we have raised in
10 letters. We felt that there was not much we could do
11 after the May meeting about the Caution Lake Road which
12 we considered caused damage to Caution Lake and to
13 Cross Lake, two lakes which we had fished regularly,
14 so we gave up on that and didn't say anything more.

15 But from all the correspondence you can
16 see, I quite agree, that they have been dealt with
17 subsequently, yes.

18 Q. And I'm correct that the concerns you
19 talked about here today all relate to blocks 9 and 10?

20 A. Yes.

21 Q. And the Caution Lake Road, just for
22 the Board's information, could you point that out on
23 the map which is Exhibit 1799?

24 A. Yes. This map here, the map -- the
25 Caution Lake Road runs from about 3.5 miles south of

1 Jones which would be on the order of five kilometres
2 south of Jones, on the Jones road westward and runs
3 about 16 kilometres over to -- just south of -- this is
4 Cross Lake although it's not marked on the map, and
5 that is the Caution Lake Road which is the major
6 primary road.

7 Q. And that road does not provide direct
8 access to Cash Lake or Caribou Lake?

9 A. That's correct.

10 Q. Now, Appendix G which is in your
11 material, which is the minutes of the meeting of May
12 9th, 1987 with the cottagers --

13 A. Yes.

14 MADAM CHAIR: Excuse me, Ms. Blastorah,
15 can I have a clarification--

16 MS. BLASTORAH: Yes.

17 MADAM CHAIR: --on what the reference was
18 to the fact that blocks 9 and 10 will be excluded in
19 the approved TMP?

20 MS. BLASTORAH: The original reference I
21 made was to Appendix D which is a letter to Dr.
22 Henderson from Mr. Pyzer and it indicates in that
23 letter in the third large paragraph that:

24 "No timber harvesting is scheduled in
25 this area. Operations for the 1987-88

1 year will be located directly west of
2 Wild Lake Road."

3 MR. MARTEL: That's the concern. I think
4 I followed Dr. Henderson this morning saying he
5 objected to being asked for input and before he had an
6 opportunity to make that input, the plan was approved.
7 I think that is the sequence of events.

8 And I worry that, how can you ask the
9 public to participate - and maybe I'll ask the question
10 of Dr. Henderson - do you feel like participating if
11 you are requested for information on a specific plan,
12 led to believe that your input is going to have some
13 contribution to the plan, and before it's even
14 submitted, the plan is approved? What kind of
15 perception does that leave you with respect to the
16 planning process?

17 THE WITNESS: Well, my perception is that
18 nothing I say can have any effect because the --
19 anything I say is done after the action is taken.

20 MR. MARTEL: What does that do to other
21 people then, other people who are involved, the other
22 cottagers and what people spread by word of mouth, what
23 sort of reaction does that lead to to the whole
24 planning process if that is tolerated?

25 THE WITNESS: Well, the feeling that's

1 generated is there's not very much we can do, we're
2 fighting against a group that have their mind made up;
3 rather than agreeing with a group that will listen
4 carefully and assess our interest and their interest at
5 same time.

6 And that is probably caused partly by the
7 dual hats worn by the Ministry of Natural Resources,
8 while being not only the group that makes the plan and
9 oversees it, but also benefits from it from the timber
10 harvesting.

11 MS. BLASTORAH: If I can just follow up
12 from Mr. Martel's question, I would like to make sure
13 this is very clear, and I'm sure you would as well, Dr.
14 Henderson.

15 Q. Will you agree with me that the plan
16 approval of which you received notice in 1987 -- in
17 March of 1987 did not include an approval for blocks 9
18 and 10 which are the blocks dealing with the Cash Lake
19 area?

20 A. The undertaking was put into writing
21 that there would not be cutting in blocks 9 or 10 until
22 our concerns about those blocks, but not about other
23 blocks, were taken into account.

24 Q. Will you turn to Appendix G in your
25 source book, please, and specifically to the first page

1 of the minutes of that meeting of May 9th.

2 A. The first page of the minutes?

3 Q. The first page of the actual minutes.

4 A. Yes.

5 Q. And will you agree with me that the
6 fifth bullet point -- or, I beg your pardon, the fourth
7 bullet point there indicates that an explanation was
8 provided, and that would be to the cottagers at that
9 meeting; would you agree with me that? That was a
10 meeting with the cottagers? I'm just trying to
11 clarify --

12 A. An explanation was attempted and I
13 think that I was not clear at all about the sequence of
14 planning proposals or what kind of -- what nature of a
15 process that was, and so it -- I didn't understand it
16 in the kind of detail that would be understood by a
17 person who was familiar with the whole process.

18 Q. Okay. Just to clarify, because I
19 just wanted to confirm, this was the meeting with the
20 cottagers, this was a meeting with the cottagers on May
21 9th.

22 Now, what this bullet indicates is that
23 an explanation was provided as to the status of the
24 proposals around Cash Lake and it indicates not
25 approved and future steps being taken to involve the

1 cottagers in the planning process.

2 Now, you'll agree that at least some
3 attempt was made to explain that to the cottagers?

4 A. Yes.

5 Q. And that that is indicated here and
6 it is indicated here that the proposals around Cash
7 Lake are not approved at this point in time?

8 A. Yes.

9 Q. Now, will you also turn to Appendix I
10 of your source material which is a letter from Mr.
11 Pyzer to you dated June 14th, 1988. And if you'll turn
12 to the first page of that letter you'll notice in the
13 third paragraph the first sentence reads:

14 "Prior to making a final decision on our
15 timber management activities in blocks 9
16 and 10 we wish to have your comment on
17 the attached proposals."

18 Do you agree that is what that letter
19 indicates?

20 A. Yes.

21 Q. And if you turn over to the first
22 page --

23 A. I would also note the next sentence
24 said:

25 "We would appreciate receiving them by

1 July 8th."

2 A time about three weeks distant from the
3 date of the letter.

4 Q. Yes. And did you have any problem
5 with meeting that deadline?

6 A. I think I addressed my letter on July
7 the 5th, so I just made it.

8 Q. And did you at any time contact the
9 district to indicate that you would perhaps like a
10 little more time to comment?

11 A. I didn't, no.

12 Q. Okay. If you would turn over to the
13 first page of the harvest and silvicultural proposals
14 for blocks 9 and 10 which is page 3 of that appendix.

15 A. Yes.

16 Q. Do you have that?

17 A. Yes.

18 Q. Now, in the second sentence of the
19 first paragraph under Introduction, will you agree with
20 me that the proposals indicate that these blocks were
21 withdrawn from the approval process to ensure the
22 cottagers' concerns were addressed?

23 A. You are referring to the top of page
24 3?

25 Q. Which looks like this.

1 A. The Cash Creek areas of concern, is
2 that --

3 Q. It says Introduction, the heading is
4 Introduction and the second sentence reads:

5 "These blocks were withdrawn", and it's a
6 reference to blocks 9 and 10.

7 A. Oh, I see. I have that as page 1 of
8 harvest and silvicultural proposals.

9 Q. That's the right page.

10 A. Yes.

11 Q. And that's what that indicates. So
12 we are in agreement; are we, Dr. Henderson, that there
13 had not been a decision nor approval in relation to
14 blocks 9 and 10 as of the date of this letter, which is
15 June 14th, 1988?

16 A. Yes, that was what that introductory
17 paragraph says.

18 Q. And can you agree with me, or will
19 you agree with me that final approval of the plan in
20 relation to blocks 9 and 10 was not given until
21 December of 1989?

22 A. That's what the letters that we have
23 in evidence show.

24 Q. Thank you. Now, when you attended
25 the district office in April of 1987; correct?

1 A. Mm-hmm.

2 Q. You reviewed the whole draft plan
3 including the proposals for blocks 9 and 10?

4 A. I reviewed as much as I could within
5 two and a half hours. I don't think I had time to read
6 all of it.

7 Q. I see. I take it you didn't feel
8 constrained in coming back; did you, apart from your
9 own schedule?

10 A. Well, it's matter of time because it
11 takes a day, and I can only get 2 1/2 to three hours
12 out of the day to actually work in the office there.

13 Q. I appreciate that it's difficult for
14 people to take time from their own schedule.

15 A. Yes.

16 Q. But am I correct that the Ministry
17 did not in any way attempt to limit the time you had--

18 A. No.

19 Q. --in the office?

20 A. That's true.

21 Q. And you indicated that the Ministry
22 staff attempted to answer any questions you might have
23 put. Is that a fair assessment?

24 A. They were reluctant to answer, but
25 whether it was because they had the answers and didn't

1 want to, or whether they didn't know the answers, I'm
2 not sure.

3 Q. So leaving aside any perception you
4 may have had about why they were or were not able to
5 answer your questions, will you agree that they did
6 attempt to provide some answers to questions you
7 raised?

8 A. They did.

9 Q. Thank you. Now, you've indicated in
10 Appendix F -- or you've included rather as Appendix F
11 in your source material some notes prepared by you in
12 relation to the field environmental planning process
13 for the Caution Lake Road which you pointed out to the
14 Board on Exhibit 1799, and you've indicated that road
15 does not directly access to Cash Lake; correct?

16 A. Yes.

17 Q. Now, will you agree with me that the
18 following facts are not included in your memorandum
19 which is Appendix F, that the access via that road is
20 for the 20-year period and beyond, not just the
21 five-year period you looked at in your review?

22 A. The total road would be for the 20
23 years. The portion of the road which is shown on the
24 map would be for a lesser period because there was a
25 portion of it not constructed under this budget or on

1 that map.

2 Q. Right. So the longer term 20-year
3 proposal was to extend that road to provide longer term
4 access. Will you agree with that?

5 A. Yes.

6 Q. And the advantages listed on page 2
7 of Appendix E I believe it is, which is the field
8 environmental planning process document, include the
9 following: that the road will provide --

10 MS. BLASTORAH: I'm sorry, I will wait
11 until you get there.

12 MADAM CHAIR: What page is that, Ms.
13 Blastorah?

14 MS. BLASTORAH: It's page 2 of the field
15 environmental planning procedure which is Appendix E.

16 Q. The advantages listed on page 2
17 include that the road will provide greater flexibility
18 in allocations and will assist in breaking up the cut
19 and controlling the size of clearcuts by separating cut
20 and uncut areas, that the road will provide possible
21 access for salvage of budworm damaged areas --

22 MS. SWENARCHUK: Excuse me, Ms.
23 Blastorah. I don't know where you are. Page 2...?

24 MS. BLASTORAH: Of the field
25 environmental planning document.

1 MADAM CHAIR: Are these points 1 to 6 at
2 the top of page 2?

3 MS. BLASTORAH: Yes, they are. I wasn't
4 going to read them all, I was just asking Dr. Henderson
5 to agree that some of the points of the advantages
6 listed there he kdid not include in his material.

7 Q. That the total road is intended to be
8 26 kilometres in length with the purpose of accessing
9 5,897 hectares and not just the 12.5 kilometres to
10 access 26 hectares that you looked at in your review?

11 A. Yes. On the other hand, I think that
12 the quantity of timber which I indicate is the quantity
13 of timber that relates to the full length. I'm not
14 positive of that, but I would rather think that that's
15 what I secured out of that study.

16 Q. So it's your understanding that that
17 was the total volume to be taken off that road?

18 A. I think it was. As I say, I'm not
19 positive of that because I didn't excerpt the exact
20 description, and I can't tell from memory at this
21 point, but I think that that's what I obtained and
22 those quantities are large enough for that.

23 Q. And would you agree with me that if
24 in fact the total volume to be obtained via that road
25 was -- if that total volume was 5,897 hectares as

1 opposed to 261 hectares, that would make a great
2 difference in terms of the benefits to be received as
3 opposed to the costs of building the road?

4 A. Well, yes, and I stated when I was
5 giving testimony about my Exhibit F that I had just
6 garnered that information in order to give me some
7 understanding of the quantities involved and that I
8 couldn't make a judgment of the value of it, but that I
9 noted that the maintenance of the road and the
10 maintenance of the cutting area and other expenses
11 related to that did not seem to be included as a cost
12 against the cutting nor the ongoing review and prior
13 fire protection of the area until it could be harvested
14 again, and so that there is a limited set of costs
15 apparently charged against the cutting.

16 Q. So am I correct then that you were
17 raising some concerns about what you perceived to be
18 the costs and benefits on your review and you weren't
19 intending to indicate to the Board any determinative
20 opinion as to whether it was -- this road had a
21 positive cost/benefit value, if I can put it that way?

22 A. No. All I can say is that I wonder
23 about it and in my work I have spent a good deal of
24 time evaluating things on a dollar basis, and so it may
25 be my habit of mind to try to do that, but I couldn't

1 come to a conclusion on this because I didn't have
2 enough information or knowledge.

3 Q. Thank you. Now, in the letter of
4 March 27th, 1987 from the district manager in Kenora -
5 and that's Appendix D in your information - Mr. Pyzer
6 suggested that a meeting with the Cash Lake cottagers
7 be held in the spring or summer of 1987.

8 A. Which...?

9 Q. That was Appendix D,

10 A. D, all right.

11 Q. We're going back.

12 A. Letter of March 27th?

13 Q. Right. And he suggests there that
14 several of the cottagers have requested a meeting and
15 he suggests that one be held in the spring and summer.

16 And would you agree with me that would be
17 during the cottaging season?

18 A. Yes, right.

19 Q. And that meeting was in fact held on
20 Saturday, May 9th?

21 A. That's correct.

22 Q. And you've agreed that you found that
23 meeting to be generally useful, I think you indicated
24 that in your correspondence to Mr. Pyzer.

25 A. I felt at the time that we left that

1 meeting that it had been useful.

2 Q. And you have indicated subsequently
3 here today and in correspondence to Mr. Pyzer that you
4 had some concern about the details or particulars
5 included in the minutes of that meeting that were
6 provided to you by that the district?

7 A. Mm-hmm.

8 Q. And you expressed those concerns in a
9 letter dated July 30th, 1987 which is Appendix H in
10 your source book.

11 A. Yes.

12 Q. Now, are you aware that that letter
13 setting out your concerns is included in the
14 supplementary documentation to the timber management
15 plan and is, therefore, part of the public record?

16 A. I would only know that by hearsay.
17 I'm not aware of that document and I wasn't advised
18 that that was what was done with it.

19 Q. So when you reviewed the plan, the
20 draft plan in the district office, do I take it then
21 you didn't look at the supplementary documentation
22 portion of the plan?

23 A. I don't recall seeing that, no.

24 Q. Would that alleviate your concerns to
25 some extent in relation to ensuring that the public

1 record is not prejudiced if your concerns about the
2 minutes were in fact available on the public record?

3 A. I think it's possible for that to
4 help, but I don't think that merely including it on the
5 public record automatically makes it help.

6 Q. But it would potentially help clarify
7 matters?

8 A. As I say, it's possible for it to
9 help, but it doesn't necessarily give any aid to these
10 concerns.

11 Q. And just to follow up, are you aware
12 that your original comment sheet as well as those of
13 the other members of the public who commented on the
14 plan and any other correspondence in relation to the
15 preparation of the timber management plan are also
16 included in that supplementary documentation to the
17 plan which is part of the public record?

18 A. Well, again, I have never had a
19 letter to that effect saying that and you're implying
20 that that is what is done, and if you say that is true,
21 I expect it is, but I don't know of my own knowledge
22 whether that is true or not.

23 Q. Now, could I just ask you to turn
24 briefly to Appendix B which is your comment sheet on
25 the Aulneau timber management plan proposals.

1 A. Yes.

2 Q. Will you agree with me that there is
3 a typed notation on the bottom lefthand portion of that
4 document, the very last paragraph, which reads:

5 "This is public information."

6 Will you agree with me that that was a
7 typed portion of this comment sheet that was on the
8 document when you received it?

9 A. Yes, it was.

10 Q. Okay, thank you. Now, the minutes of
11 the May 9th meeting indicate that on -site inspections
12 of features and values of concern to the cottagers
13 would be conducted to determine appropriate methods of
14 protection.

15 And will you agree with me that those
16 inspections were in fact conducted on July 7th and 8th,
17 1987?

18 A. Yes, they were. I don't think we
19 were aware of those occurring, however, in advance; in
20 other words, the members of the MNR chose that date and
21 arrived.

22 And, in fact, I think that may have been
23 the date that Mr. Marsh came out of the bush at our
24 cottage very thirsty and we gave him a drink of spring
25 water and he said it was very hot going in the bush.

1 It may not have been however but, in any event, I was
2 aware that it went on some time about that time and I
3 didn't diarize it so I'm not positive of the date.

4 Q. And am I correct that Mr. Rob, one of
5 the other cottagers was with Mr. Marsh when he came to
6 your cottage on July 8th?

7 A. No, that's not correct, Mr. Rob was
8 not. Mr. Rob discussed it with me and he said that he
9 had conveyed Mr. Marsh to a point on the lake where he
10 wanted to start, conveyed him in his boat and then Mr.
11 Marsh set off on foot to cruise the timber and view the
12 terrain.

13 Q. Now, it's my information that those
14 inspections were arranged with Mr. Rob and that
15 representatives of the cottagers association, or at
16 least cottagers did attend all or parts of that field
17 inspection. Were you aware of that, or can you confirm
18 that?

19 A. Well, I think that what was said, Mr.
20 Rob said: Well, I'll be down all during July and you
21 can come in any day you like. And they chose a day
22 that suited them, and they came in and they do have to
23 consider their schedule and the weather and have to
24 come in by plane and you can't land every day.

25 And so I don't think that he was

1 particularly expecting them that day, as far as I know,
2 and they arrived there that day.

3 Q. Do you know one way or the other or
4 you just don't know that he did know?

5 A. Well, that's the way Mr. Rob
6 described it to me.

7 Q. Okay.

8 A. He said: Oh, I'm glad to have them
9 come in any time and be glad to look after them with
10 the boat and take them around.

11 Q. In any event, on July 8th, 1987 you
12 did have some conversation with Mr. Marsh the unit
13 forester?

14 A. Yes. As I say, I didn't diarize it
15 so I can't be positive of that exact date but it may
16 very well have been.

17 Q. And am I correct that you had an
18 opportunity to speak to him about some of your concerns
19 in relation to the view or possible view of operations
20 from the back of your cottage property?

21 A. To speak to him about it, yes, but he
22 wasn't anxious to go back in there and, in fact, he
23 didn't go back in. So I wasn't able to point out
24 anything to him that I couldn't point out from the side
25 of my cottage.

1 Q. Now, in June of 1988 you received
2 from the district the revised harvest and silvicultural
3 proposals for Cash Lake which are included in your
4 source book in Appendix I, and those proposals outlined
5 options resulting from the field inspections in July of
6 1987; correct?

7 A. That's what it says.

8 Q. And will you agree with me that the
9 cover letter asks for the comments. I think you
10 already have agreed with me that the covering letter
11 asks for comments prior to a final decision being made.

12 A. The bottom paragraph on the first
13 page of Appendix I says:

14 "Prior to making a final decision on our
15 timber management activity, we wish to
16 have your comments."

17 Q. Yes. Would you turn to page 1 of
18 those draft proposals, of the actual harvest and
19 silvicultural proposals.

20 A. Yes.

21 Q. Now, the fourth paragraph under
22 background information states:

23 "Wild fire losses in the Kenora
24 District were severe in 1976, 1980 and
25 1983. This year we have already had

1 timber loss because of fire 14 just west
2 of Kenora in the Minaki Crown Unit.
3 These fires have created a tight wood
4 supply situation with respect to
5 accessible mature timber in Kenora
6 District.

7 "The areas depleted to wild fire in
8 the district during the past 12 years
9 have been at least four times more than
10 was harvested during the same time
11 period.

12 "The timber in question in blocks 9
13 and 10, therefore, is important for the
14 local economy for both the pulp mill and
15 the sawmills located here. "

16 And I think you've already agreed with
17 Mr. Cassidy that you recognize there was a tight wood
18 supply situation in Kenora; is that correct?

19 A. Well, that can be looked at two ways.
20 I'm not sure if it means that if the fires hadn't
21 occurred then it might not have been necessary to cut
22 block 9 and 10 but once there's fires, then you cut
23 whatever's in sight. I think you can look at that
24 either way.

25 And the implicit assumption in this

1 statement is that once you have fires, then you cut
2 what you have to cut in order to get your timber;
3 whereas, the overview could very well be, we then go
4 short of timber, and that point is not a palatable
5 outcome apparently for the MNR.

6 Q. Well, leaving aside for the moment
7 any question of what steps were taken to protect the
8 environment, you'll agree I believe that the fires in
9 the Kenora area did create a tight wood supply
10 situation?

11 A. That's what that statement says.

12 Q. Now, I was somewhat confused by your
13 answer to one of the Ministry's interrogatories in
14 relation to the marking of reserve boundaries, and I
15 would like to just clarify that.

16 In relation to that matter, I would like
17 to file the area of concern prescriptions in relation
18 to some of the areas of concern in blocks 9 and 10 and
19 provide you with that just for reference as we work
20 through this.

21 MS. BLASTORAH: If I could mark that,
22 Mrs. Koven?

23 THE WITNESS: This is a new document, Ms.
24 Blastorah?

25 MS. BLASTORAH: This is out of the plan

1 and these are the actual area of concern prescriptions
2 which are included in the timber management plan, and
3 what I've done is for ease of the Board and the parties
4 and certainly Dr. Henderson in referring to this
5 material, I have included a copy of a map on the front
6 indicating the areas of concern by number so that you
7 can identify them, and I will point out to you which
8 one I'm referring to.

9 I only want to refer to one page of this,
10 I just wanted you to have whatever you might want to
11 look at.

12 MS. SWENARCHUK: Which plan?

13 MS. BLASTORAH: This is the Aulneau Crown
14 Management Unit timber management plan as approved.

15 MS. SWENARCHUK: Exhibit 1611.

16 MS. BLASTORAH: And these are the final
17 area of concern prescriptions for blocks 9 and 10.

18 MADAM CHAIR: This is the 1986-91 plan?

19 MS. BLASTORAH: Yes, that's correct.

20 MADAM CHAIR: All right. This will be
21 Exhibit 1803. And how many pages do you have there,
22 Ms. Blastorah?

23 MS. BLASTORAH: Eight pages.

24 MADAM CHAIR: Thank you. These are
25 excerpts of the AOC.

1 MS. BLASTORAH: Yes. Perhaps I should
2 just identify file them. On the first page is a map
3 showing the Cash Lake cutting proposals and indicating
4 the areas of concern by number.

5 And the balance of the pages are the area
6 of concern planning records for area of concern No. 1
7 in block 9; area of concern No. 2 in block 9 - mine are
8 mixed up I believe, I am just going to get another
9 copy - area of concern No. 3 in block 9; area of
10 concern No. 2 in block 10; area of concern No. 3 in
11 block 10; area of concern No. 4 in block 10; and
12 supplement to the timber management plan setting out
13 the compliance monitoring and cut inspections
14 provisions for blocks 9 and 10.

15 ---EXHIBIT NO. 1803: Document containing map showing
16 AOCs by number and final area of
17 concern prescriptions for blocks
18 9 and 10 of Aulneau Crown
Management Unit 1986-91 timber
management plan.

19 MS. BLASTORAH: Q. Now, Dr. Henderson,
20 if I could just ask you to look at the map for one
21 moment.

22 A. Could you give me the date of that
23 plan, Ms. Blastorah?

24 Q. It's the 1986-90 Aulneau Crown -- I
25 beg your pardon, 1986-91 timber management plan for the

1 Aulneau Crown Management Unit and these are the final
2 area of concern prescriptions for blocks 9 and 10?

3 A. Would there be a date of issue of
4 that part of the plan?

5 Q. This is part of the amendment dated I
6 believe December, 1990. 1989, I beg your pardon.

7 A. 1989, thank you.

8 Q. Now, if you will look on the map at
9 the front, just so we all know what we are talking
10 about, you'll see on the lefthand side the word skyline
11 and portage?

12 A. The two separate --

13 Q. Two separate indications. I'm just
14 trying to give you some reference points.

15 A. Yes.

16 Q. And you'll see marked between them is
17 No. 1, an area marked No. 1. Unfortunately this is in
18 black and white so it's a little hard to read.

19 A. Yes, yes.

20 Q. Now, that is just for your reference,
21 area indicating where area of concern No. 1 is in block
22 9. And if you turn over the page, the first area of
23 concern planning record is area of concern No. 1 for
24 block 9.

25 Now, will you agree with me that the area

1 of concern described here is a reserve ranging in size
2 from 140 metres to 396 metres from the shoreline and
3 that actual field layout will vary but the cut will not
4 be visible from the lake?

5 A. Well, I would have to scale the map
6 to know whether that area agrees with 140 to 360 -- 396
7 metres. It may, but I can't tell that without again
8 going down to it in the scale.

9 Q. So you're indicating then that you
10 can't verify that the map is accurate in accordance
11 with what is prescribed?

12 A. No, and also the way that that land
13 rises, I'm not sure that the skyline would be met
14 particularly at the north end of the patch of land that
15 seems to be included by the No. 1.

16 Q. Okay. Then leaving aside whether or
17 not the map that is attached to this exhibit actually
18 conforms with the prescription, and leaving aside the
19 word skyline then, will you agree with me that the area
20 of concern identified is identified as ranging in size
21 from 140 metres to 396 metres from the shoreline?

22 A. It's identified that way, but whether
23 it's correct or not I can't tell right now.

24 Q. Whether it's correctly mapped or not?

25 A. Yes, yes.

1 Q. And when you look down to the
2 preferred alternative and rationale identified further
3 down the page, it reads:

4 "Cottagers do not want the cut-over to be
5 visible from the lake or their lots."

6 Do you see that?

7 A. Yes.

8 Q. And do you agree that that was a
9 concern of the cottagers?

10 A. Yes.

11 Q. Now, would you turn to Appendix I of
12 your source book, please, and specifically page 2.
13 That is page 2 of the actual harvest and silvicultural
14 proposals.

15 A. Yes.

16 Q. Now, in the first paragraph under
17 Aesthetic Buffer behind Property Lines, do you see that
18 paragraph? Will you agree with me that the third
19 sentence in that paragraph reads:

20 "The average width of the reserve
21 here...", and that is behind the cottage
22 properties:

23 "...is 152 metres or 500 feet from the
24 rear property lines. The width increases
25 as it extends easterly towards the CNR

1 tracks."

2 Will you agree with me that the reserve
3 is marked -- that the reserve as actually marked on the
4 ground is on the backside of the second ridge from the
5 lake, from Cash Lake?

6 A. First of all, you are referring to
7 the sentence under shoreline concerns or further down?

8 Q. No, further down, I'm sorry.

9 A. Behind property lines.

10 Q. Yes. Let's make sure we're talking
11 about the same thing. Do you see the paragraph,
12 Aesthetic Buffer --

13 A. Oh, the average width of reserve here
14 is 152 metres, 500 feet from your property lines.

15 Q. Right, the average width.

16 A. That's what that says, yes.

17 Q. Yes. So the average width is 500
18 feet. And will you agree with me that the reserve as
19 actually marked on the ground is in fact marked on the
20 backside; in other words, the slope furthest away from
21 the lake of the second ridge from the lakeshore. Can
22 you confirm that?

23 A. I doubt that. I certainly can't
24 confirm it from this map.

25 Q. No, I'm asking you from your

1 experience in the field. You've reviewed where the
2 boundary is actually marked; am I correct?

3 A. Yes.

4 Q. And you've walked that?

5 A. Yes.

6 Q. Or you have seen it?

7 A. Most of it, yes.

8 Q. So from your experience in actually
9 looking at where the boundary is marked, will you agree
10 with me that where it's actually marked on the ground
11 is on the backside of the second slope away from the
12 lake?

13 A. No, a large part of it is not.

14 Q. And can you tell me where, in your
15 opinion, it's not marked?

16 A. Behind LK 254, lot LK 254 and down
17 towards the spring area it is definitely not.

18 Q. Well, can you agree with me that
19 given where the boundary is actually marked on the
20 ground, operations will not be visible from the
21 lakeshore nor from the cottage lots?

22 A. No, I think they would be.

23 Q. So in your opinion --

24 A. They would be from the lakeshore --
25 from the lake.

1 Q. From the lake?

2 A. Yes, from the lake.

3 Q. From the cottage lots would they be
4 visible, in your opinion?

5 A. Well, you can't see very far from the
6 cottages so long as the trees are standing because the
7 trees are in the road, but the vista is seen from the
8 lake, and so that the point of the skyline was, as
9 you're on the lake when you look at the skyline you
10 want the trees around the lake not cut, and that was
11 the point, as I understood it, for the skyline to have
12 reserve to the skyline.

13 And certainly towards -- around the
14 spring drainage area you'll be able to see that from
15 the lake, you'll be able to see the cut from the lake.

16 Q. And that's in the spring area?

17 A. Yes.

18 Q. Okay. Now, are you aware that two
19 members of the cottagers association, Dr. Hobbs and Mr.
20 Ed Duvall, accompanied Ministry staff on a helicopter
21 tour of the Cash Lake area on October 31st, 1990?

22 A. I'm aware of that.

23 Q. And are you aware that they indicated
24 to the Ministry at that time that they were satisfied
25 that the reserve boundary as marked complied with the

1 area of concern prescriptions?

2 A. Well, that wasn't what Dr. Hobbs told
3 me. In fact, Dr. Hobbs told rather an interesting
4 story of having been put on the side of the aircraft
5 that was always on the up side and so he couldn't see
6 down on the ground, and Mr. Duvall, however, was put on
7 the other side and he could see more, but Dr. Hobbs
8 said that, as a matter of fact, he saw very little of
9 the spring watershed on that trip.

10 Q. And do you know whether Dr. Hobbs
11 intended to indicate whether that was some intentional
12 effort by the Ministry to prevent him from accurately
13 seeing?

14 A. Well, he didn't know but he said that
15 he didn't see very much, and so that he wasn't -- he
16 didn't feel that he could agree to that and that is
17 what he told me.

18 Q. And it's my information that in fact
19 Mr. Duvall -- of the two cottagers who were present, it
20 was Mr. Duvall who had a camera, I believe.

21 A. I expect that would be true, although
22 I don't know.

23 Q. So would you agree with me that it
24 might be more appropriate to put him in the better view
25 seat, if that's the correct terminology?

1 A. Well, maybe.

2 Q. Would you turn to Appendix R in your
3 material, please. Now, I would just like to clarify
4 what may be my misunderstanding of something you may or
5 may not have intended to imply from your witness
6 statement.

7 But this is a letter from the district
8 manager to you in relation to the marking of
9 boundaries. And I would just like to confirm that the
10 district manager -- or clarify that on my reading the
11 district manager does not indicate that there has been
12 any marking error in relation to the reserve
13 boundaries, but that in reserve marking in the field
14 there may be deviations from the prescribed distance in
15 order to better protect or enhance the value.

16 Will you agree that's what the letter
17 says?

18 A. Well, that's what the letter says,
19 but that isn't what they did in the field because
20 wherever they deviated they always deviated towards the
21 lake rather than away from it. So they weren't
22 protecting more than was shown by the plan, they
23 weren't protecting in any of the features because all
24 the deviations were towards the lake.

25 Q. So you would not agree, I take it

1 then, that in the case of the spring the reserve was
2 actually increased in some location to follow a natural
3 slope so that the reserve is actually on the side of
4 the slope furthest away from the spring?

5 A. Not that I found.

6 Q. So you would not agree with that?

7 A. No, I wouldn't agree with that.

8 Q. Now, in paragraph 18 of your witness
9 statement you indicate that in the fall of 1989 you
10 were concerned about proposed cutting in block 9, and I
11 think you've indicated - and I just wanted to clarify
12 this - that in fact there was no cutting in block 9
13 until the winter of 1990.

14 A. That's correct.

15 Q. And leaving aside the question of
16 whether or not you're satisfied with the particulars of
17 the response, will you agree with me that the letter
18 you received from the district manager dated September
19 29th, 1989, which is Appendix N of your material, did
20 attempt to address the concerns that you had raised in
21 your September correspondence?

22 A. No, I wouldn't agree with that at all
23 because he in virtually every case evaded the specific
24 information which I supplied to him and mentioned
25 parallel or similar data in order to make a reply.

1 And so he didn't answer it, he's quite
2 clever at it I think, and I don't know -- I can't tell
3 whether he believes he answered it, maybe he does
4 believe he answered it, and no reason to believe that
5 he isn't a conscientious man trying to give answers,
6 but in fact he doesn't deal with the evidence I give
7 him in order to give me an answer, and so I don't
8 believe he answered very much of my question at all.

9 Q. So leaving aside the question then of
10 whether or not he actually did detail the evidence that
11 you had provided him, can we go this far together, can
12 we agree that he did address each of the issues that
13 you had raised?

14 A. He certainly titled the issues and
15 had some sentences about them.

16 Q. Okay. Another matter of
17 clarification, again in relation to the reserve
18 boundaries, you indicated in paragraph 20 that -- you
19 made a comment about the timing of the cut boundary
20 marking, and I would just like to clarify: Did you
21 intend to imply by your comment in paragraph 20 that
22 the timing of the marking of those boundaries was in
23 any way timed so as to preclude the cottagers from
24 checking the flag line?

25 A. Well, I wondered about that. It may

1 be just pressure of business, but the fact that it was
2 done after the summer rather than during the summer,
3 that certainly raises that question, when the time is
4 short.

5 And it's obviously more difficult for us
6 to view those when they're done in September or early
7 October - and I guess maybe it's done in late
8 September, than if it were done in August - then we
9 would be -- many would be there.

10 Q. And you're aware that Mr. Pyzer did
11 suggest that some of the cottagers might want to check
12 that flag line and he advised you that the flag line
13 was going to be flagged; correct?

14 A. Mm-hmm.

15 Q. And are you aware that some of the
16 cottagers did in fact take the opportunity to examine
17 the flag line.

18 A. Oh absolutely, as soon as I got this
19 letter my son went down the next weekend to examine it.

20 Q. And in fact I think you've already
21 indicated that Mr. Duvall and Mr. Hobbs had the
22 opportunity to fly over the area to view the marked
23 boundaries?

24 A. That was '91; was it not, was that
25 not the date you gave me, January, '91?

1 Q. Yes.

2 A. Yes, that was quite a bit later. It
3 was in the autumn of '89, October/November, '89 when
4 many of those measurements were done, and then in the
5 summer of 1990, I surveyed it with a Wilde theodolite
6 and a transect transite.

7 Q. Just to go back to the helicopter
8 tour, you would agree with me that that tour did take
9 place before any cutting in block 9? The tour was
10 October, 1990.

11 A. I'm trying to recollect the date. I
12 guess it was October, 31st; was it?

13 Q. Yes, it was.

14 A. October 31st. Yes, that was prior to
15 the --

16 Q. Now, I would just like to confirm one
17 thing. Ms. Seaborn has already dealt with some of the
18 concerns in relation to the spring, and I just ask you
19 to turn to Appendix R of your material.

20 A. Yes.

21 Q. Which is a letter to you from Mr.
22 Pyzer dated December 5, 1989. Do you have that?

23 A. I have that, yes.

24 Q. And I just ask you to confirm that
25 the Ministry advises there that they have consulted

1 with a hydrologist at MOE and they are satisfied that
2 there will not be any untoward effects to the spring as
3 a result of harvesting operations.

4 Would you agree with that?

5 A. That is what that says. They don't
6 say whether they had communicated to him, that
7 hydrologist, the details of the geography and
8 topography which I had indicated to them.

9 Q. And subsequent to that you did in
10 fact provide your own information to the Ministry of
11 the Environment?

12 A. Yes.

13 Q. Now, in relation to the flow rate of
14 the spring, I just have a very few questions.

15 A. Mm-hmm.

16 Q. Have you done any investigations
17 yourself to determine whether the harvesting to date in
18 block 9 has had any effect on the flow rate of the
19 spring?

20 A. It hasn't come close enough -- it
21 must be - and I haven't measured this - but it must be
22 at least half, probably three quarters of a mile away
23 and it wouldn't -- it wouldn't affect it until the
24 spring watershed is harvested.

25 Q. So you wouldn't be surprised then if

1 the Ministry had done investigations and, in fact,
2 there had been no effect on the flow rate of the
3 spring?

4 A. Oh, there wouldn't be any flow
5 rate -- flow change yet because it hasn't been -- there
6 hasn't been any cutting at that point.

7 Q. In the spring -- what you've referred
8 to as the spring basin?

9 A. That's correct.

10 Q. And am I correct then that the -- or
11 can you just confirm for the Board that the harvesting
12 which has taken place in block 9 is actually in the
13 southeast corner of block 9?

14 A. Yes. I haven't surveyed it and my
15 son surveyed it partially, but it appears to be in the
16 south -- southern corner.

17 MS. BLASTORAH: If I could just have a
18 moment, Mrs. Koven, I'm eliminating some questions that
19 have already been covered.

20 Q. Okay. With regard to the preparation
21 of the Kenora Crown Management Unit timber management
22 plan--

23 A. Yes.

24 Q. --this is just to make sure that
25 everybody is talking about the same thing, this is not

1 the Aulneau plan that we have been talking about up to
2 now, but the Kenora Crown Management Unit timber
3 management plan.

4 A. That's for the coming period
5 1991-2011, is that what you're referring to?

6 Q. Yes, that's correct. Now, you've
7 included in your material a letter where you raise some
8 concerns in relation to the preparation of that plan
9 and that is Appendix Z in your material if you wish to
10 refer to it.

11 A. Yes.

12 Q. Now, you raised a concern about
13 portages in that letter?

14 A. Yes, mm-hmm.

15 Q. And I note here that you haven't
16 specified any particulars of any specific portages;
17 correct?

18 A. Yes, because there are many.

19 Q. Right.

20 A. And the portages are age-old means of
21 transportation and they are marked on maps and are,
22 thus, given a firm geographical position.

23 Q. Are you aware of what steps were
24 taken by the district during the preparation of this
25 timber management plan to identify portages?

1 A. Mr. Pyzer replied to me and I don't
2 recall what he said other than that he agreed that they
3 should be protected.

4 Q. Have you reviewed the approved timber
5 management plan for the Kenora Crown Management Unit?

6 A. I have not.

7 Q. So you are not aware of what
8 protection has been afforded to portages?

9 A. No.

10 Q. Okay. Now, you've also raised a
11 concern about a particular trapper here I gather. Are
12 you aware of whether the Ministry contacted that
13 trapper in connection with the preparation of the
14 Kenora timber management plan?

15 A. I'm not positive. I rather think
16 they may not have, but I'm not sure about that.

17 Q. You don't -- it would be fair to say
18 that you're not sure?

19 A. I'm not sure.

20 Q. Okay. Now, I think, just to get our
21 dates straight, I would just like to clarify and
22 confirm that the original plan for the Aulneau - back
23 to the Aulneau timber management plan again - the
24 original plan was approved in March of 1987 excluding
25 blocks 9 and 10. I think you've agreed on that?

1 A. Yes.

2 Q. And your comments were -- your first
3 comments were received in June of 1988?

4 A. Yes. Was it June or July?

5 Q. Well, shall we say --

6 A. July 5th, wasn't it.

7 Q. I'll accept your date. Late spring
8 early summer of 1988?

9 A. Yes.

10 Q. And there were ongoing discussions
11 with you and the other cottagers on Cash Lake
12 throughout 1988 and '89?

13 A. Yes.

14 Q. And final approval in relation to
15 blocks 9 and 10 was not given until December of 1989?

16 A. Yes.

17 Q. And you'll agree with me that was
18 approximately a two-year delay in the approval of the
19 operations for blocks 9 and 10?

20 A. Mm-hmm.

21 Q. Now, paragraph 35 of your witness
22 statement - which I seem to have misplaced - you've
23 indicated that you feel that the Ministry has made
24 virtually no changes in its timber management proposals
25 for the Cash Lake area.

1 And I would just like to ask you to agree
2 that the following changes were made to the original
3 timber management plan proposals to address the
4 concerns of the cottagers. Originally the proposal was
5 for year round harvest in both blocks 9 and 10, and the
6 approved plan calls for winter harvest only in blocks
7 9. Do you agree with that?

8 A. I understood that the plan had not
9 been approved and that there were two options proposed,
10 one of which was a winter road and one of which was
11 year round harvesting, and that we had the option of
12 the choice, that there wasn't a change but rather that
13 we had the choice of the option on two unapproved
14 options.

15 Q. I'm not entirely sure I followed
16 that.

17 A. You're saying that there was a
18 change.

19 Q. Yes.

20 A. I'm saying that there was not a
21 change, that the department was neutral as to which of
22 the two options would be chosen, and that we were given
23 the two options and that we chose the winter road.

24 Q. And are those the two options that
25 were set out in the silvicultural and harvest

1 prescriptions provided to you in Appendix I?

2 A. Yes.

3 Q. So you're not referring to whatever
4 proposals may have been in the draft plan prior to
5 that?

6 A. That's right. In any case, those
7 were not approved.

8 Q. That's right. And I'm just trying to
9 clarify what was originally proposed as opposed to what
10 was finally approved.

11 A. Well, I don't know that the all year
12 round was originally proposed singly, but it's my
13 understanding that both the winter road and the other
14 were proposed as options, one of which could be chosen.

15 Q. Okay. I don't want to further
16 confuse matters. I was talking about the timing of
17 harvest as opposed to whether the road was all-weather
18 or not, but I'll move on to another area because I
19 think we are just going to confuse it further.

20 A. All right.

21 MS. SWENARCHUK: Ms. Blastorah, if I can
22 just clarify. Does your question refer only to block
23 9, or are you saying winter harvest in both blocks 9
24 and 10, or just block 9?

25 MS. BLASTORAH: Maybe I will just repeat

1 my question to clarify for you, Ms. Swenarchuk.

2 What I said was, it's my understanding
3 that the original proposal was for year round harvest
4 in both blocks and the plan as approved calls for
5 winter harvest only in block 9.

6 Q. And you'll agree with me, Dr.
7 Henderson, that the choice was left to the cottagers?

8 A. Yes.

9 Q. Okay.

10 A. Assuming of course that this actually
11 was approved by the CNR to get across -- over a road
12 over the CNR which I'm not sure was ever available to
13 the MNR.

14 Q. Would you agree with me that the --
15 well, I'll come back to this in terms of the access.

16 Will you agree with me that all areas of
17 concern in the Cash Lake area were increased
18 substantially to protect the spring, a walking and ski
19 trail, portages, a waterfall and private cottage lots?

20 A. No, I don't think so.

21 Q. So you're not aware that the original
22 proposal for the east side of Cash Lake was 120 metres
23 and that the final approved plan calls for a 150-metre
24 to 396-metre reserve?

25 A. Sorry, you're claiming that there is

1 an extra 30 metres added.

2 Q. I'm claiming that -- I'm stating that
3 it's my information the original proposal called for a
4 120-metre reserve on the east side of Cash Lake and the
5 approved plan calls for a 150-metre to 396-metre
6 varying width reserve?

7 A. Well, I would agree that it ended up
8 to be an average of 152 metres or 500 feet, which is
9 what you read out earlier, however, I won't agree that
10 it's actually flagged at that distance and, in fact,
11 the flagging is somewhat within -- inside that distance
12 and it doesn't allow even a 120-metre no-cut zone in at
13 least one place.

14 So that there's sort of a give and take
15 away there, where there's a give of an extra 30 metres,
16 which is not a great deal of space, and then taken away
17 on the actual flagging.

18 So there may be 30 metres in some places,
19 a hundred feet, and then take away of 240 feet
20 somewhere else and how it comes out, I don't know. it
21 may be -- it may be a little bit more, but I suspect
22 it's actually less.

23 Q. So just to clarify, have you agreed
24 with me or not that the original proposal was 120
25 metres on the east side of Cash Lake?

1 A. Yes, I think that's correct.

2 Q. Okay. And will you agree with me
3 that the original proposed reserve on Caribou Lake was
4 60 metres?

5 A. I thought it was wider than that. I
6 may be wrong. I don't recall that figure.

7 Q. Do you agree with me that the final
8 reserve on Caribou Lake is a varying width reserve from
9 60 to 301 metres?

10 A. I would have to refer to this map and
11 scale it - that's this area down here. I don't know if
12 it's as wide as you say or not, it may be --

13 Q. So you can't confirm or refute that
14 one way or the other?

15 A. I can't confirm -- that no-cut, here
16 for example, doesn't look as wide. How wide did you
17 say?

18 Q. 60 to 301 metres varying width.

19 A. Oh, so part of it stayed at the 60
20 metres you claimed is the same, and some of it is wider
21 here.

22 Q. And are you able to confirm that the
23 original reserve prescription for Cash Creek was 50
24 metres on either side of the creek?

25 A. I don't, but that's interesting

1 because that wouldn't fit with your rules of having to
2 be at least 60 metres where the slope is 40 degrees.

3 Q. Well, leaving that aside, I'm just
4 asking you whether you're aware whether -- or whether
5 or not you can confirm that the original prescription
6 for Cash Creek called for a 50-metre reserve on either
7 side of Cash Creek?

8 A. I can't recall.

9 Q. And can you confirm that the final
10 proposal or the final approved plan calls for a
11 120-metre minimum reserve on Cash Creek?

12 A. Yes. In fact, I think it's even a
13 little wider than that because the cost of constructing
14 a road across there was too great and the terrain is
15 such that you can't get at that timber, and so I think
16 it might be even a little wider than that.

17 Q. Now, coming back to the access
18 question, and I will try and state this as clearly as I
19 can, it's my understanding that the original proposal
20 was to access block 9 through block 10. Can you
21 confirm that?

22 A. Well, I think that is the reverse of
23 what you told me earlier. You tried to say, I think,
24 that the access was to be an all year round access
25 which would come through the north, which would not be

1 through block 10, and I said that I thought there were
2 two options, neither of which was chosen.

3 Q. Maybe I can clarify. My earlier
4 question to you was in relation to timing of harvest
5 and had nothing to do with access. Now I'm asking you
6 about access, and are you able to agree that the
7 original proposal was to access block 9 by an
8 all-weather road through block 10?

9 A. I think there were the two options
10 and that the idea of going through block 10 was
11 originally to cut across the creek which was determined
12 to be too costly as well as to spoil the aesthetics.

13 Q. Okay.

14 A. And so then the option was changed
15 slightly to a winter road.

16 Q. That was the preferred option of the
17 cottagers if there was to be access?

18 A. Yes.

19 Q. And in block 10 the tertiary road is
20 to be rendered impassable on the completion of
21 operations; correct?

22 A. I think that's true.

23 Q. And that was a change from the
24 original prescription?

25 A. I thought that that was open and not

1 approved; again, that it was an option but not an
2 approved plan, and you told me the point the plan
3 wasn't approved until '89 so it couldn't have been --

4 Q. Well, not to belabour it, I'm just
5 trying to clarify the original proposals as opposed to
6 what was finally --

7 A. Proposals. I thought you had used
8 the word plan.

9 Q. Well, if I did I was incorrect. So
10 just to be clear, the original proposal--

11 A. Mm-hmm.

12 Q. --was changed to allow for or to call
13 for rendering the tertiary road in block 10 impassable.
14 Would you agree with that?

15 A. Yes.

16 Q. Okay. Now, in relation to access, I
17 think you've agreed in your evidence this morning and
18 in answers to interrogatories that until recently the
19 CN passenger train which used the tracks indicated on
20 the map which is Exhibit 1799 was the most common form
21 of access used by the cottagers?

22 A. Yes.

23 Q. And you're aware that in February,
24 1990 the weekend run of that passenger train was
25 discontinued; correct?

1 A. Yes. Actually I think it was
2 December, '89 but certainly about that time.

3 Q. And are you aware that since that
4 time inquiries have been made on behalf of the Cash
5 Lake cottagers with regard to maintenance of the
6 all-weather road in block 10 and, in fact, its possible
7 extension to the southeast arm of Cash Lake in order to
8 provide road access to the cottages on Cash Lake?

9 A. I'm aware that there were inquiries.

10 Q. And if I were to suggest to you that
11 the final prescriptions in the approved Aulneau timber
12 management plan for the Cash Lake area prescribed
13 no-cut reserves on approximately 38 per cent of block 9
14 and 42 per cent of block 10, would you have any basis
15 to disagree with that statement?

16 A. Well, was block 9 originally to
17 include the normal no-cut reserves along the lake and
18 the area that would normally -- that could not be cut
19 because there's no trees, such as swamps and rock or
20 not?

21 In other words, is that 38 per cent kind
22 of double counting of things that couldn't and wouldn't
23 have been cut under any plan, or is that 38 per cent
24 total that could be cut under existing rules and is not
25 being cut, which of the --

1 Q. Just to clarify then, I'm asking you
2 whether you have any information to agree that the
3 final no-cut reserve prescriptions in block 9
4 constitute 38 per cent of the total area of block 9?

5 A. Mm-hmm. Well, I don't know because
6 we don't have the definition of total area block 9 that
7 you're talking about.

8 Q. All land.

9 A. Oh, well then it probably does, but
10 it would -- that 38 per cent would include those areas
11 which I pointed out would be included as no-cut in any
12 event.

13 Q. And, similarly, you would have no
14 basis to disagree that 42 per cent of block 10 has been
15 set aside as a no-cut reserve looking at all land area
16 in block 10?

17 A. Well, again, that may be true, but
18 most of it would have to be set aside in any event.

19 MS. BLASTORAH: I think those are my
20 questions, Mrs. Koven, Mr. Martel.

21 Thank you very much, Dr. Henderson.

22 MADAM CHAIR: Thank you, Ms. Blastorah.

23 Would you like -- are you going to be
24 long in re-examination, Ms. Swenarchuk?

25 MS. SWENARCHUK: No questions.

1 MADAM CHAIR: Shall we go ahead and
2 then --

3 MR. MARTEL: She has no questions.

4 MADAM CHAIR: You don't have any. All
5 right, we're finished.

6 Is there anything else you would like to
7 say to the Board Dr. Henderson?

8 THE WITNESS: Well, Madam Chair, Mr.
9 Martel, I would like to thank you very much for your
10 patience. I'm afraid I may have been longer worded
11 than I could have been if I had been learned, and thank
12 you for the patience of the others involved in the
13 hearing and I appreciate the opportunity of being able
14 to submit my evidence.

15 Thank you very much.

16 MADAM CHAIR: Well, it's the Board who
17 appreciates you attending today, Dr. Henderson.

18 Thank you very much.

19 ---Witness withdraws.

20 I think we are reconvening at four
21 o'clock.

22 One other matter. We have a map to put
23 into exhibit that was prepared by the Ministry of
24 Natural Resources, and I don't know if the parties have
25 seen that map or not.

1 MS. SWENARCHUK: I think it -- my
2 information is that at this point it's a draft and it's
3 subject to some review by the parties as to whether
4 it's to become an exhibit or not, Madam Chair.

5 MADAM CHAIR: All right.

6 MS. SEABORN: I was advised as well by
7 Ms. Murphy that she would like the parties to review
8 these maps this week and we may have some comments
9 prior to them being introduced to the Board.

10 MADAM CHAIR: Well, the Board will
11 certainly wait to get your comments on the map,
12 although it's our intention to make this map or
13 something like it an exhibit.

14 MS. SWENARCHUK: The question would be
15 whether this map is complete.

16 MADAM CHAIR: Okay, thank you.

17 MS. SWENARCHUK: Thank you.

18 ---Recess at 2:50 p.m.

19 ---On resuming at 4:10 p.m.

20 MADAM CHAIR: Hello. Please be seated.
21 Welcome to sunny Toronto, Mr. Colborne.

22 MR. COLBORNE: Thank you, Madam Chair.

23 MADAM CHAIR: We're here to do two things
24 tonight, and of first importance is to look at the
25 evidence that will be upcoming in your case, as we do

1 in cases of all the parties.

2 Did you receive the statements of issues,
3 Mr. Colborne, from each of the parties?

4 MR. COLBORNE: Yes, I have.

5 MADAM CHAIR: Okay. Why don't we start
6 then with the scoping exercise for witness statement
7 No. 1 for Grand Council Treaty No. 3.

8 And after we have finished with the three
9 statements we are working on tonight, we will have a
10 discussion about the Ministry of Natural Resources
11 proposal for negotiations. And will all the parties be
12 staying for that discussion as well?

13 (collectively nodding affirmatively)

14 All right. The way we normally do this,
15 is the Board has looked at these documents very
16 carefully and if we have questions that we don't see
17 raised in interrogatories or they aren't clear to us in
18 the witness statements, we tend to ask those ourselves.

19 So I will proceed. We don't have a lot
20 of comments on this material. The reading of it seems
21 fairly clear to us, but we will tell you what our
22 comment is with respect to witness statement No. 1, and
23 then we will invite you to ask the parties if there's
24 anything about what they've asked you that isn't clear,
25 and then the parties can add anything they want to.

1 We will do that for each witness
2 statement.

3 MR. COLBORNE: Very well.

4 MADAM CHAIR: Okay. With respect to the
5 ethno-historical report that is witness statement No. 1
6 for Grand Council Treaty No. 3, the Board has just one
7 question of clarification, and I don't quite how you'll
8 address it, but our question is this - and it's an
9 issue that is touched on throughout the material in
10 witness statement No. 1 - and historically, what did
11 the Governments of Canada and Ontario think that Grand
12 Council Treaty No. 3 communities would do to make a
13 living at the time they signed treaties and in the
14 intervening years?

15 It's clear to us how the history is
16 described in this document, but it's not clear to us
17 what the perception was of governments about how these
18 communities were to make a living when their reserve
19 areas appeared to be getting smaller over time rather
20 than larger, and many of the difficulties that are
21 described here.

22 I don't know if you can address that
23 issue directly with the witnesses in Panel 1 or not.

24 MR. COLBORNE: I think those witnesses
25 are probably the experts on that particular question,

1 and if their evidence did not focus on the government
2 perception but instead more generally on the historical
3 record, I'll make sure that they come to the hearing
4 prepared to give the evidence that they can with
5 respect to the government perspective.

6 I have a fair idea of what they would say
7 because I've briefed myself.

8 Initially the province was not involved
9 and at that time the federal government had the idea
10 that Indians would become agriculturalists because this
11 was the era of expanding agriculture, but as
12 agriculture in the fringe areas declined in the early
13 20th century, that is climatically in terms of soil and
14 so on, fringe, that was the time when the federal
15 government began to withdraw from very much
16 participation other than mere administration of Indian
17 affairs matters and left everything to the province.

18 And the province at that time - and this
19 is beginning with the early 20th century - began
20 adopting a policy of simply ignoring the fact that the
21 Indians were there and carrying on and policies of
22 particularly enforcement but also allocation of
23 resources as if they represented only the non-Indian
24 population.

25 MADAM CHAIR: Well, certainly we would

1 like your witnesses to address themselves to that.

2 And, as I've said, we've gone through very interesting
3 historical material in the database for this as well
4 and we're able to pick up the pieces of it, but we
5 would like to know what the intentions were of
6 governments in Canada with respect to pressures that
7 were put on communities to change their lifestyles,
8 what they thought these communities would do.

9 MR. COLBORNE: Very well.

10 MADAM CHAIR: Okay, thank you. Now, is
11 there anything in the material with respect to witness
12 Panel 1 that you wanted clarification from the parties
13 on, Mr. Colborne?

14 MR. COLBORNE: Yes. Just with respect to
15 Ministry of Natural Resources, a general comment. It
16 would be helpful to me if the Ministry could relate
17 their questions to particular paragraphs in the witness
18 statement because it's quite a long witness statement
19 and, although I think the witnesses made a good effort
20 at organizing it, the fairly generally worded questions
21 or topics for cross-examination that have been filed by
22 the Ministry could relate, in some cases, to 10, 20, 30
23 of those paragraphs, and so I would like the MNR to
24 provide me with a list of the paragraphs that they are
25 referring to in relation to each of their questions, if

1 that is possible.

2 MR. FREIDIN: Where that is possible we
3 will do that, Madam Chair. I think in respect of most
4 of them it is difficult, if not impossible, to pinpoint
5 specifically which paragraphs.

6 For instance, we asked a question as in
7 (c) the reason for the discussion of the historical
8 events surrounding the signing of Treaty No. 3. Well,
9 there are -- that's a general question as to that topic
10 quite irrespective of how many paragraphs might be
11 dealing with that issue.

12 So to the extent that we can accommodate
13 Mr. Colborne we will, but I think that the questions
14 are general because they aren't, in fact, specifically
15 addressed to specific paragraphs; rather, they are
16 addressing what we see as general topics or themes
17 which run throughout the witness statement.

18 MR. COLBORNE: The next point, again
19 addressed to the Ministry of Natural Resources. With
20 respect to the first two cross-examination topics, I
21 I'm not clear exactly what is intended there because
22 these witnesses, that is the Panel 1 witnesses, have
23 identified themselves as ethnologists and
24 ethno-historians. They are not able to provide opinion
25 evidence with respect to the matters referred to in (a)

1 and (b).

2 I don't mind saying that right now,
3 because I would say that right at the beginning of the
4 evidence.

5 So that said, is there any content
6 remaining in (a) and (b)?

7 MR. FREIDIN: Well, to the extent that
8 you can provide me with the definition of, as we've
9 indicated, the activities of timber management as they
10 are perceived by Treaty No. 3 for the purpose of this
11 hearing, I am content that you advise me of that and
12 these witnesses don't provide me with that, but they
13 refer to the activities of timber management, I want to
14 make sure that I understand when they say or refer to
15 the activities of timber management what it exactly is
16 that they are referring to.

17 MR. COLBORNE: Oh well, in that case, I
18 definitely need some paragraph reference because I
19 don't recall them using that phrase.

20 MR. FREIDIN: Okay. All right. I will
21 take that under advisement and try to provide you with
22 that information.

23 In terms of the answers that seem to be
24 given in reply to opinion evidence about the biological
25 effects of timber harvest practices, again, without

1 referring to paragraphs, Mr. Colborne, I believe there
2 are references where they do make comments on the
3 biological effects of timber management harvest
4 practices.

5 MR. COLBORNE: Well, wait a sec, wait a
6 sec. You know the difference between opinion evidence
7 and other types of evidence. They cannot give opinion
8 evidence, but that does not prevent them from referring
9 to a particular topic.

10 MR. FREIDIN: Well, they can't give
11 opinion evidence on that and, to the extent that they
12 are saying that a certain condition is the result of --
13 a certain condition of the biological environment is
14 the result of a timber harvest practice, that in fact
15 is an expert opinion and to that extent --

16 MADAM CHAIR: Excuse me, Mr. Freidin, but
17 they hardly address anything in the 20th century. I
18 mean, their evidence sort of goes up -- you know, we
19 get up to 1920 and then I think there's one reference
20 after that to a dam built in 1955.

21 But the timber practices we are talking
22 about are certainly not current. Would you disagree,
23 Mr. Colborne?

24 MR. COLBORNE: I think this is important
25 in terms of what is opinion evidence and what is not

1 opinion evidence. A historian can come forward and say
2 this is what the historic record shows, that is in
3 effect opinion evidence by a historian, and a historian
4 cannot come forward and say I think that such and such
5 an activity in the forest causes such and such a
6 result, because that same person is not qualified to
7 give that evidence.

8 But most, if not all, of what these
9 witnesses are saying is that they have examined the
10 historical record and it contains these things, these
11 facts, and I think that people who are qualified to
12 give historical evidence can do that.

13 MR. FREIDIN: That is a fair comment,
14 Madam Chair. If they are commenting -- if their
15 evidence, going back as far as you want, is in fact
16 saying this is what the historical record says and they
17 are not leading that evidence to, in fact, you know,
18 saying that that is necessarily accurate from a
19 scientific point of view but that's what the record
20 says historically, I have no problem with that.

21 MADAM CHAIR: Now, was there anything
22 else you wanted to ask -- well, the only
23 cross-examination by the Ministry of Natural Resources
24 is planned for, and have you heard from any other
25 parties? Is that your understanding, Mr. Colborne?

1 MR. COLBORNE: I have heard from the
2 Ministry of the Environment and OFIA, neither of whom
3 have indicated topics for cross-examination. They have
4 reserved their right to cross-examine, of course, but
5 they have not listed particular topics.

6 MADAM CHAIR: All right. Mr. Freidin,
7 will you be conducting the cross-examination of Panel
8 1?

9 MR. FREIDIN: Yes.

10 MADAM CHAIR: Do you have any questions
11 for Mr. Colborne?

12 MR. FREIDIN: No.

13 MADAM CHAIR: Do you have any idea of how
14 long you'll be in cross-examination?

15 MR. FREIDIN: If Mr. Colborne can tell me
16 how long he thinks his people will be, that may help me
17 estimate my time.

18 MR. COLBORNE: One to two days.

19 MR. MARTEL: Mr. Colborne, when you're
20 considering the matter raised by my colleague, would
21 you keep in mind pages 104, the bottom four lines, and
22 the top of 105, that caused me great concern.

23 And I guess if we could get also a
24 clarification what specifically, because there's a
25 difference of opinion. One looks at the bottom of page

1 64 and the top of 65, the one paragraph, which seems
2 for me ties it together, you surrender the reserves of
3 timber and land to treaty and you lose on the other
4 areas, that part I quoted, commercial licences and so
5 on.

6 I would like that tied in together, if
7 you can, as to what is left for the Indian people to
8 survive on and how they're expected to, or anticipated
9 that they can really make some form of living out of
10 the forest that surrounds them under those conditions.

11 MR. COLBORNE: I will ask the witnesses
12 to examine those particular passages.

13 MR. MARTEL: Two paragraphs.

14 MR. COLBORNE: And be prepared to expand
15 on them.

16 MR. MARTEL: If you would, I would
17 appreciate it.

18 MADAM CHAIR: Mr. Freidin, how long will
19 you be in cross-examination?

20 MR. FREIDIN: My estimate is three
21 quarters of a day.

22 MR. CASSIDY: Madam Chair, as indicated
23 in our statement of issues, we do not propose to
24 cross-examine on the witness statement as filed.
25 However, you will have the opportunity to meet Mr. Doug

1 Hunt who will be attending on behalf of the OFIA to
2 observe and hear this evidence.

3 And as we did in the statement of issues,
4 and as Mr. Colborne has correctly stated, we reserve
5 our right to cross-examine on issues that are led in
6 oral evidence -- that are dealt with in oral evidence
7 that are not dealt with in the witness statement at
8 large or that serve to expand upon the issues in the
9 witness statement in a fashion that we may wish to
10 cross-examine on them.

11 MADAM CHAIR: Thank you, Mr. Cassidy. Is
12 that the week -- which is the week that we have taken a
13 day out because of the intervenor funding business?

14 MR. FREIDIN: That is the week --

15 MADAM CHAIR: Is that the week?

16 MR. FREIDIN: The first week --

17 MR. CASSIDY: The first week, as I
18 understand, a memo went out from Mr. Pascoe today
19 that - Mr. Colborne and I had a discussion about this
20 and I'm not sure, it might serve to get it clarified
21 now - the memo that I'm been advised exists indicates
22 that we are going to commence this evidence on the week
23 of May 27th and that is the week the intervenor funding
24 hearing would take place at the end of, I'm told.

25 MADAM CHAIR: The way it's scheduled now,

1 Mr. Colborne, aren't you starting May 23rd?

2 MR. COLBORNE: Yes.

3 MADAM CHAIR: Which is a Thursday, and
4 then we will sit Monday, Tuesday and Wednesday of that
5 week, so we should have no difficulty completing it,
6 looks like we only need three days maximum to do this
7 panel.

8 MR. COLBORNE: Yes.

9 MADAM CHAIR: And then that should give
10 you enough time to come back to Toronto as well for the
11 intervenor funding hearing.

12 I think the only question is what time we
13 start on Monday and we will look at our travel schedule
14 again and sort that out.

15 ---Discussion off the record

16 MR. COLBORNE: Madam Chairman, my
17 colleagues are suggesting that I do mention the fact
18 that the 27th might be a better day to start this.

19 I don't know if you've discussed this
20 with Mr. Pascoe. Oh, I see Mr. Martel shaking his
21 head. That's fine, I will start on the scheduled day.

22 MR. MARTEL: Well, we're already in
23 Kenora, I think that's what -- and we would only be
24 there for two days.

25 MADAM CHAIR: In Kenora -- we've

1 scheduled a satellite hearing in Kenora on the Tuesday
2 and Wednesday.

3 MR. FREIDIN: Just Wednesday. The open
4 house is on the Tuesday. There's only, the community
5 hearing is on Wednesday.

6 MR. MARTEL: That's right. It would not
7 be very fruitful for us to go there for one day and
8 that is, in essence, what we would be doing if we
9 didn't hear evidence of Mr. Colborne on Thursday, we
10 would have travelled all the way to Kenora for one day,
11 which is hardly a wise use of anybody's time, and that
12 is why we scheduled it.

13 The over thing I wanted to raise and
14 suggest to my colleague was that Monday, to make it
15 convenient, to make sure we're done, I think we would
16 be prepared to sit into the evening for a couple of
17 hours on Monday rather than force people to stay for an
18 hour on -- if we get done in three days, on Wednesday
19 or something like that. It depends on the flexibility
20 of your people though, Mr. Colborne.

21 MR. COLBORNE: My people for Panels 1 and
22 2 are very flexible.

23 MADAM CHAIR: All right.

24 MR. MARTEL: And maybe we can play it by
25 ear as we go along.

1 MR. COLBORNE: Panel 3 becomes a lot more
2 difficult.

3 MADAM CHAIR: Mm-hmm.

4 MR. COLBORNE: So if by chance Panels 1
5 and 2 can be completed by the end of the 29th, that is
6 four maybe longish days, then that is very convenient
7 for me.

8 MR. MARTEL: You have got a scoping
9 session.

10 MADAM CHAIR: You've got to come down
11 for -- the intervenor funding meetings I think are
12 scheduled for the 29th and the 30th.

13 MR. COLBORNE: Oh, I thought they were
14 the 30th and 31st.

15 MADAM CHAIR: Oh.

16 MR. FREIDIN: Yes, that's correct, they
17 are.

18 MADAM CHAIR: When's the Friday. Oh, the
19 Friday is the 30th. Yes, the 30th and 31st.

20 MR. MARTEL: You have to get out of
21 Kenora to here, Mr. Colborne. As you know, it can pose
22 a bit of a problem if people are going to be here for
23 Thursday morning for scoping.

24 MADAM CHAIR: You're suggesting that if
25 we finish on the 28th, you would like to bring someone

1 in the 29th to start on Panel 2?

2 MR. MARTEL: He's going to bring them in
3 there for one day, that's the crazy part.

4 You're bringing them in for one day then,
5 your Panel 2 people.

6 MR. COLBORNE: Most of my Panel 2 people
7 live in--

8 MADAM CHAIR: There.

9 MR. MARTEL: In Kenora?

10 MR. COLBORNE: --in that area.

11 MR. MARTEL: Yes, all right.

12 MR. COLBORNE: So that is way I say
13 Panels 1 and 2 are easy to handle.

14 MADAM CHAIR: Well, certainly if there's
15 an indication after the Thursday the 23rd that we're
16 going to be finished on the Tuesday, the Board would
17 certainly sit on Wednesday to begin Panel 2. We
18 wouldn't have any problems with that.

19 It just looks like to us that the week is
20 going to be wrapped up on that Wednesday night.

21 MR. MARTEL: And it's got to be early
22 Wednesday for people to fly, they have to fly to
23 Winnipeg to get to here, as you know.

24 MADAM CHAIR: Okay.

25 MR. MARTEL: But your people are

1 accessible. I think will be up there so, you can make
2 that decision on Monday or --

3 MR. FREIDIN: Madam Chair, you were going
4 to advise when we would be starting on Monday the 27th?

5 MADAM CHAIR: Yes. Mr. Pascoe, do we
6 know when we are starting on Monday the 27th?

7 MR. PASCOE: We were hoping to start at
8 approximately 1:30 but...

9 MR. MARTEL: But that's why I suggested
10 the possibility of sitting until and have dinner and
11 then go back after dinner that night.

12 MR. FREIDIN: On Monday.

13 MR. MARTEL: On Monday, and get the same
14 number of regular hours in but save people from leaving
15 home Sunday afternoon.

16 MADAM CHAIR: Is that convenient for you,
17 Mr. Colborne, if we start at 1:30 p.m. and take a
18 dinner break and sit into the evening, depending on how
19 your witnesses feel at that point.

20 MR. COLBORNE: That is no problem at all
21 for me.

22 MADAM CHAIR: Okay, great. Then we will
23 start at 1:30 on May 27th.

24 MR. COLBORNE: Madam Chairman, I wanted
25 to clarify three more of the Ministry of Natural

1 Resources questions, if I could, briefly.

2 MADAM CHAIR: Go ahead.

3 MR. COLBORNE: The third one in the list,
4 Mr. Freidin, as a topic of cross-examination, the
5 reasons for the discussion of the historical events
6 surrounding the signing of Treaty 3.

7 I'm not clear on what you mean there. If
8 you ask my witnesses why they included that, they will
9 no doubt tell you because I asked them to. So I'm not
10 sure what -- it strikes me that this is argument.

11 MADAM CHAIR: Mr. Colborne, I don't have
12 that. Where are you?

13 MR. COLBORNE: Oh, Ministry of Natural
14 Resources, witness statement for Panel 1, topics for
15 cross-examination, paragraph 2(c).

16 MADAM CHAIR: We don't have a paragraph
17 2(c).

18 MR. FREIDIN: Panel No. 1.

19 MADAM CHAIR: I have a different version.

20 MR. CASSIDY: I have a version you can
21 borrow, Madam Chair.

22 MADAM CHAIR: No, I'm with you. It was
23 my mistake. I've got it, go ahead, Mr. Colborne.

24 MR. FREIDIN: Mr. Colborne has asked --
25 has indicated that really what I'm asking for is a

1 matter of argument and his witnesses won't really be
2 able to say anything other than the fact that they were
3 dealing with that because Mr. Colborne asked them to.

4 It's been the practice of this particular
5 panel, Madam Chair, that where evidence is being led
6 and there is some question by the parties as to the
7 purpose for which it is being led, although technically
8 it might be classified as argument, to assist the
9 Board, to assist the parties who are going to be
10 questioning, it seems to me to be of some help to know
11 what the purpose for that evidence is; like, what is
12 the term or condition, for example, that you're trying
13 to specifically support through leading that evidence.

14 And it's for that reason I asked the
15 question. I agree it's sort of argument, but I would
16 hopefully have Mr. Colborne agree that he would assist
17 both the Board and myself to know why that type of
18 evidence is being led.

19 What is -- is this going to support a
20 specific form of relief that he's going to ask or not,
21 and that's to simplify.

22 MR. COLBORNE: Certainly. I can do that
23 right now. It's there to establish that my clients
24 have treaty rights in the area of the undertaking, this
25 particular part of it, and those are constitution

1 protected rights in Canada, they are land rights.

2 That's why it's part of the evidence.

3 I suppose my witnesses could expand on
4 that somewhat as well, but only from the point of view
5 of historians.

6 MADAM CHAIR: Mm-hmm.

7 MR. FREIDIN: Next question?

8 MR. COLBORNE: 2(d). I'm not sure what
9 this means either, because my client organization is
10 really a political organization and this question
11 strikes me as being a little bit like asking any
12 politically representative government what its
13 relationship with the voters is. You know, I don't get
14 it.

15 MR. FREIDIN: Well --

16 MR. COLBORNE: We're not talking about a
17 private club of some kind or a public interest group,
18 this is essentially a political organization.

19 MR. FREIDIN: All right. Well, the
20 reason for asking the question, and it might not be --
21 this may not be the appropriate panel and I think
22 you'll see that I've asked that question in relation to
23 the other two panels.

24 I've indicated that I'm going to ask
25 about that because in timber management planning there

1 is some question as to whether discussions should be
2 taking place with Grand Council Treaty No. 3 or its
3 constituent members; to what extent can Grand Council
4 Treaty No. 3 speak for and bind each of its constituent
5 members; all of the bands which, in fact, are members
6 or constituent members of Grand Council Treaty No. 3,
7 you know, how do you go about agreeing that a certain
8 position is being taken are going to bind all of you.

9 I'm not sure of what the relationship is
10 between the bands and the treaty organization or
11 between the bands themselves.

12 MR. COLBORNE: Well, Madam Chairman, if
13 that is the question, I think it should be the subject
14 for a written interrogatory. My client has not filed a
15 witness statement saying this is who we are and this is
16 the addresses of the different bands and these are the
17 chiefs this year and so on.

18 MADAM CHAIR: Well --

19 MR. COLBORNE: And I didn't know until
20 just now that the Ministry of Natural Resources may
21 want that information.

22 MADAM CHAIR: Well, Mr. Freidin, looking
23 at the way Mr. Colborne has structured his case there
24 are really only two witness statements where you would
25 have witnesses who can really address that kind of

1 question, and that would be the chiefs in Panel 3 and
2 the elders in Panel 6.

3 I mean, none of the other witness panels
4 will have very much to do with this, I wouldn't think.
5 Now, what the question is I'm still not clear.

6 MR. FREIDIN: As I've indicated it might
7 not be -- this may not be the right panel. Let me just
8 give you a better idea where I'm coming from.

9 MR. COLBORNE: Actually this may be a
10 good panel because --

11 MR. FREIDIN: Actually in Panel No. 3,
12 for instance -- no, Panel 2 --

13 'MADAM CHAIR: But what's the point of the
14 question, Mr. Freidin. Are we asking whether all the
15 members of Grand Council Treaty No. 3 agree with this
16 evidence, or who these witnesses speak for, or...

17 MR. FREIDIN: Well, there may be
18 something -- no, no, let me -- if I could have a
19 moment.

20 For instance, in Panel No. 3 we asked for
21 further oral explanation. The comment is made in the
22 witness statement that the effect -- that the situation
23 of each community must be looked at separately and that
24 pre-conceptions and blanket assumptions should not be
25 applied. That perhaps more clearly indicates where I

1 am interested in asking some questions.

2 That is a statement that is made by Grand
3 Council Treaty No. 3, and if each community must be
4 looked at separately and that there's a suggestion that
5 some pre-conceptions and blanket assumptions should not
6 be applied, what does that mean, what does that mean in
7 the context of Treaty No. 3 coming forward and making a
8 specific position on behalf of all these individual
9 bands where they say that each of them should be looked
10 at separately.

11 So I don't care which panel it's dealt
12 with in and if Mr. Colborne says I should wait until
13 No. 3 and not bother people in 1 and 2, that's fine.

14 That's really sort of what I'm getting at
15 and I think that is a legitimate area of question. It
16 arises specifically out of something in their witness
17 statement.

18 MR. MARTEL: What do you mean by
19 constituent members? Are you talking about individual
20 bands or communities?

21 MR. FREIDIN: Well, as I understand it,
22 I'm no expert, but constituent members would be the
23 bands. If the witnesses want to tell me that I
24 misunderstand that and the constituent members are
25 something else, then I best know that and I will ask

1 them to expand on it.

2 MR. COLBORNE: I still say that it might
3 well be the subject for a written interrogatory so that
4 it's clear between now and the 23rd what is required
5 because I'm still not clear.

6 MADAM CHAIR: Do you agree, Mr. Colborne,
7 that this is a matter that would not be addressed in
8 Panels 1 or 2?

9 MR. COLBORNE: Well, Grand Council Treaty
10 No. 3 predates the Government of Ontario, so maybe the
11 historians do have something to say about that, or it
12 certainly didn't have the name Grand Council Treaty No.
13 3 back then, but there is an historical aspect to it,
14 just as there is a present day aspect to it, and I'm
15 not saying it's not a legitimate question, I just want
16 to know exactly what the question is.

17 The organization that I represent is an
18 association of chiefs. The chiefs are elected under
19 the Indian Act, most of them, and they are the
20 political representatives of their bands.

21 And so it's not a simple -- it's not a
22 question that can be answered in three or four simple
23 sentences, and so I would like to know exactly what the
24 question is and I will try to answer it exactly.

25 MR. FREIDIN: I think you can take the

1 question that I have referred you to in Panel No. 3
2 where we want an oral explanation, if you want to say
3 that's an interrogatory, it's an interrogatory, and I
4 would like a written response. I was quite willing to
5 await to hear it orally.

6 Secondly, I find it incomprehensible that
7 a party should come before the hearing, treaty No. 3 or
8 CASIT, Canadian Association of Single Industry Towns
9 and say we're not going to tell you really who we are,
10 what we are, who we represent.

11 MR. COLBORNE: Mr. Freidin, I've been
12 telling you since day one, we are the co-owners with
13 your clients of the land that we are talking about
14 here.

15 MADAM CHAIR: Well, the Board hasn't had
16 that problem, Mr. Freidin. You know, when we read
17 through witness statement No. 3 it's perfectly obvious
18 to us who the constituent members of Grand Council
19 Treaty No. 3 are. I think --

20 MR. MARTEL: Are you trying to get at
21 just how Grand Council Treaty No. 3, how the various
22 people as representatives through their chiefs respond
23 to Grand Council Treaty 3, or are we talking about the
24 reverse, the council deals with its folks?

25 I mean, it just is difficult to

1 understand what it is you precisely are looking for?

2 MR. FREIDIN: What I am precisely looking
3 for is an explanation of what Treaty No. 3 have said in
4 their Panel 3 witness statement when they say:

5 "Each community must be looked at
6 separately."

7 Now, what does that mean. Why is that
8 so, Mr. Colborne, why is that so, chief so and so?

9 MR. COLBORNE: Well, I can help with
10 that.

11 MR. FREIDIN: Let me finish. Looked at
12 separately vis-a-vis yourself, looked at separately
13 vis-a-vis the treaty organization, Treaty No. 3. I
14 don't know what you mean.

15 You say that there are pre-conceptions
16 and blanket assumptions which should not be applied.
17 What are they? Do they apply to each individual
18 community, do they apply to some communities, because
19 you've said that they must be looked at separately.
20 Please explain to me what you mean.

21 I want to know to whom I am -- it's as
22 simple as that.

23 MR. COLBORNE: That particular part of
24 the evidence was included to refer to the fact that the
25 different communities have different historical and

1 present day relations to the forest resource. Some are
2 historically not particularly users of the forest
3 resource and are, for instance, more users of the
4 fishery resource, for example, and that's really what
5 was referred to there.

6 So it didn't have a political component,
7 it had more a -- it was referring more to the factual
8 situation applying to each community.

9 MR. FREIDIN: Well, if you could lead
10 that evidence, explain that's what it meant, I would be
11 appreciative.

12 MR. COLBORNE: But that still doesn't
13 address what I thought was a political aspect to the
14 question as framed; that is, the relationship between
15 the Grand Council Treaty 3 organization and, as you put
16 it, the constituent members.

17 Does that refer to individual people or
18 bands or what?

19 MR. FREIDIN: What I'm getting at, Don,
20 is this: Let's say I ask a question and I say, in a
21 timber management plan I've got one band in the
22 management unit and the approach then will be to say:
23 Look it, we want to do something here they have some
24 comment.

25 If they say: That's fine, you go ahead

1 and do that. If that is consistent or inconsistent
2 with something, do I take it the position is
3 inconsistent with the Treaty No. 3 position which has
4 been put forward in some other form? I mean, do they
5 deal individually band by band?

6 You see, I'm asking the question perhaps
7 from my position of naivety but I'm asking it anyway
8 because I don't know.

9 MR. COLBORNE: I'm not denying the
10 question is an important one, I'm just trying to find
11 out what its constituent parts are.

12 I can tell you now that I've heard this
13 that, yes, there is a written relationship between the
14 chiefs and the Treaty 3 organization and maybe that is
15 what you want - I believe I could get authority to give
16 you that - and it essentially says that they will stick
17 together, that one band will not take a position that
18 conflicts with the general position of the chiefs
19 collectively and, similarly, the chiefs organization
20 will not take any positions which conflict with the
21 wishes of an individual band.

22 MR. FREIDIN: All right. So the next
23 sort of question I would ask then, is within the timber
24 management planning process chief so and so, we come to
25 some sort of agreement between the band and the

1 Ministry, does that mean that the planning process -
2 assuming that you are part of the planning process
3 generally that's been proposed - have to, in fact,
4 await some further authorization okayed by the treaty
5 organization before that can actually be implemented,
6 because that band doesn't act independently of the
7 treaty organization.

8 I'm dealing with a timber management
9 planning process and I want to know -- that's the sort
10 of thing I'm looking for.

11 MR. COLBORNE: Okay. Well, I'm glad we
12 had this discussion because now I know one of the
13 things' that you're asking.

14 I will try to have some witnesses
15 available. It will not be Panel 1 who can address that
16 question, but don't forget that your question was
17 framed in terms of an assumption; that is, assuming
18 that my clients want to participate in the planning
19 process as proposed.

20 MR. FREIDIN: I said it was an
21 assumption.

22 MR. COLBORNE: That does help.

23 MR. FREIDIN: I think we understand each
24 other.

25 MR. COLBORNE: I hope so.

1 MADAM CHAIR: I might add, Mr. Colborne,
2 that MNR's evidence before the Board has been that they
3 prefer dealing with native communities on local issues
4 at a local level. That is the evidence we have before
5 us.

6 MR. FREIDIN: The third one, Don?

7 MR. COLBORNE: 2(e). I'm not sure what
8 this is getting at.

9 MR. FREIDIN: Okay.

10 MR. COLBORNE: I simply don't know what
11 it's getting at at all, because I don't know why one
12 would assume that evidence of native parties would be
13 the same. So what are you talking about when you say
14 the relationship?

15 MR. FREIDIN: This arises primarily -
16 again, it might not be this panel that deals with it
17 but maybe it is - this arises primarily out of
18 examination of the positions or terms and conditions
19 being suggested by all of the native groups.

20 If we look, for instance, at OMAA, who
21 claims certain aboriginal rights to certain
22 geographical areas of a certain undefined nature, we
23 have Treaty No. 3 who are making claims of aboriginal
24 and treaty rights to a certain geographical nature of
25 an undefined nature - there may be some overlap with

1 NAN, but probably let's leave them out of it for the
2 moment - what is the significance of -- I want to
3 know, first of all, clarify whether in fact there is
4 that overlap, whether there is that potential conflict.

5 I want to examine, perhaps just raise as
6 a factual matter that that does or does not exist and
7 becomes a matter of argument, I suppose, what the
8 result of that is.

9 Does it complicate things more than they
10 might appear, does it make things more simple than they
11 might appear? I want the real situation to be as clear
12 as possible for the purposes of the Board, and it's
13 that sort -- well, that's it.

14 MR. COLBORNE: Okay. Well, the position
15 of those three native parties in relation to land
16 rights are different, but for very understandable
17 reasons. NAN's land rights are relatively undisturbed,
18 Treaty 3's land rights have been totally trampled on
19 but they have been recognized; whereas, OMAA's rights
20 haven't even been recognized, and I think that is the
21 difference.

22 You have three native parties with very
23 different land right positions, and it would be
24 surprising if, given those differences, their positions
25 were identical.

1 MR. FREIDIN: The Board is going to be
2 asked at the end of the day, I assume, to compose
3 certain terms and conditions or grant certain relief as
4 a result of the views of those groups as to what those
5 rights are.

6 MR. COLBORNE: No, not in the terms and
7 conditions proposed by Treaty 3.

8 MR. FREIDIN: Well, I can't give you any
9 other -- I can't elaborate at this time any further on
10 what I'm getting at.

11 That's the evidence of the other groups
12 that I have specifically focused in on and was
13 referring to when I referred to the relationship
14 between evidence.

15 MR. COLBORNE: Well, as long as it's
16 clear to the Board that my clients see the evidence
17 from the other native organizations at the same time as
18 everybody else does and in the same manner. Simply
19 because they are native organizations doesn't mean that
20 there is any different relationship between them as
21 there is between them and any other parties.

22 MR. FREIDIN: I might --

23 MR. COLBORNE: And I mean, the question
24 might as well be the relationship between the evidence
25 to be led by the municipal government groups and Treaty

1 3 evidence. This is why I have a little trouble with
2 the question.

3 MR. FREIDIN: All right. Well, you have
4 just cut my cross-examination to a quarter of a day,
5 Madam Chair --

6 MADAM CHAIR: Good, Mr. Freidin.

7 MR. FREIDIN: We may not have to deal
8 with all of this. To the extent that there may on the
9 face of it be a conflict or a claim to the same --
10 certain rights to certain geographical areas between
11 OMAA and Treaty No. 3, does Treaty No. 3 indicate it
12 has priorities of any sort, and when there is a
13 conflict, are we in a situation where OMAA is going to
14 say they have certain priorities, or are they going to
15 say they share equally, if in fact they are making
16 similar claims to the same area.

17 I'm just interested in what the political
18 organization Treaty No. 3 has to say about that.

19 MADAM CHAIR: Well, these witnesses in
20 Panel 1 can't say --

21 MR. FREIDIN: No, no. It may not be
22 Panel 1. If it's not Panel 1, let Mr. Colborne tell me
23 which panel I should address those questions to.

24 MR. COLBORNE: Well, I'm going have to
25 take another look at OMAA's terms and conditions, but

1 subject to that, I think the Panel is 6.

2 MR. CASSIDY: I have a question for Mr.
3 Colborne that arises out of a comment he made, Madam
4 Chair, in respect of Item 2(c) of the statement of
5 issues of the Ministry of Natural Resources.

6 He indicated that the reasons for the
7 discussion of the historical events was, as I
8 understand it in my notes, saying that to demonstrate
9 to the Board that his clients have treaty rights.

10 And my question is: Is it Mr. Colborne's
11 client's intention to ask the Board to rule on the
12 nature, validity and extent of those treaty rights,
13 aboriginal title or aboriginal land claim?

14 MR. COLBORNE: It will be my position,
15 and I think the record will disclose that I have said
16 this in hopefully almost the same words on several
17 occasions over several years, it will be my position in
18 argument that my clients have treaty rights which are
19 land rights and that it is not controversial in law
20 that they do have, the question is only what are they.

21 The reason that question remains
22 outstanding after 120 years is because the province
23 particularly, but also the federal government, have
24 refused to, in good faith, settle them.

25 And that's why our proposed terms and

1 conditions are, they have to be forced and they have to
2 be supervised to negotiate and settle them. I hope
3 that answers the question.

4 MR. CASSIDY: It's getting there. Maybe
5 if I ask it another way it might help. Is your
6 client's position then that you are not asking this
7 Board to determine the answer to the question of what
8 those treaty rights are?

9 MR. COLBORNE: To the extent that they
10 are land rights, yes; otherwise, no. I simply don't
11 want there to be a misunderstanding that I'm talking
12 about some kind of moral issues here, I'm not, I'm
13 talking about constitutionally protected rights to
14 land.

15 But I'm not going to ask this Board to
16 determine exactly what they are because that is not
17 something that -- I don't think is appropriate to ask
18 this Board to determine.

19 MR. CASSIDY: That question would be
20 answered in the negotiations which you seek to compel
21 the Ministry to engage in.

22 MR. COLBORNE: Yes.

23 MR. CASSIDY: I would like to take that
24 position under further advisement, Madam Chair, and
25 just consider it in the next couple of days.

1 I appreciate that answer, it is
2 reflective of the things I've heard in the past, but I
3 want to consider our position in light of that and
4 should there be any change in the position in light of
5 what Mr. Colborne has said in the nature of this
6 evidence, we will so advise the Board.

7 MADAM CHAIR: Anything else on -- I don't
8 think there can possibly be anything else on Panel 1.

9 Let's move on to witness statement 2.
10 The Board has just one question with this witness
11 statement, Mr. Colborne, and it is found on page 21.

12 Six major forestry issues are identified
13 by the work of the Indian forestry development program,
14 and the Board's question is: By enumerating these
15 issues, are you asking the Board to consider these to
16 be issues relating to timber management for Grand
17 Council Treaty No. 3?

18 MR. COLBORNE: Those are issues
19 identified by the Indian forestry development program
20 as indicated and your question to me is: Are those
21 adopted by my client as its own identified issues?

22 MADAM CHAIR: Or furthermore, something
23 that your client thinks this Board should be addressing
24 its mind to as well?

25 MR. COLBORNE: I would have to get some

1 help from my clients before I could answer that, but I
2 would make sure that, in fact, this would be the
3 panel -- I would make sure that the witnesses on this
4 panel are able to be clear on that.

5 MADAM CHAIR: All right. Is there
6 anything you wanted to ask on this panel? Both the
7 OFIA and the MNR will be cross-examining.

8 MR. COLBORNE: The Ministry of the
9 Environment has also filed questions.

10 MADAM CHAIR: And the Ministry of the
11 Environment. Do you have any questions to ask those
12 parties about their statement of issue.

13 MR. COLBORNE: Not with respect to the
14 Ministry of the Environment. With respect to OFIA, the
15 only thing I would request - and, again, this is just
16 if possible, - yes, relating the questions to paragraph
17 numbers would assist me in preparing the witnesses.

18 MR. CASSIDY: Mr. Cosman will be
19 attending on that cross-examination and I will relay
20 that request to him forthwith so that he can deal with
21 it upon return from his vacation in Florida.

22 MADAM CHAIR: You could fax him, Mr.
23 Cassidy:

24 MR. COLBORNE: And with respect to the
25 Ministry of Natural Resources, the first question, the

1 amount of wood allocated to Treaty 3 Indians as
2 compared to the amount harvested.

3 I don't know if that information is
4 available anywhere. Do you know, Mr. Freidin, as the
5 author of the question?

6 MR. FREIDIN: I can't recall whether we
7 have that information or not. If we do, I will be
8 putting the numbers to you and asking for confirmation.
9 If you can't answer it, then I will have to prove it in
10 reply.

11 If I don't have the actual information, I
12 will be asking the question and, in the event you don't
13 have it, I will say thank you and move on. That is
14 about a minute with the question.

15 MR. COLBORNE: All right. I am only
16 asking that because I don't think that that information
17 is available from the witnesses, or at least it would
18 take them a month to assemble it, if it exists.

19 And if that is the reason why the
20 question is asked, then I'm sure that Mr. Freidin will
21 just proceed as he has suggested; that is, put it to
22 the witnesses, if they don't know if it is right or
23 wrong, then he can prove it as part of his reply.

24 MR. FREIDIN: But to the extent that your
25 witnesses can in fact derive, if not specific details,

1 some estimate even to the point of view of saying that
2 in fact they have more allocated than they actually
3 cut, and perhaps indicate why that is the case, I would
4 be interested in that sort of information.

5 If they should say we have basically cut
6 absolutely everything we are allocated and want more, I
7 would be interested in hearing them say that, and
8 perhaps go two or three minutes on that.

9 MR. COLBORNE: With respect to Item (c)
10 Ontario government initiatives past and present. The
11 witnesses in Panel 2 do not have information with
12 respect to past initiatives, except in the most
13 anecdotal way. Is that understood, Mr. Freidin?

14 MR. FREIDIN: It is now, thank you.

15 MR. COLBORNE: Okay. I don't want you to
16 ask them to somehow inform themselves between now and
17 then on something they're really not -- that really may
18 not be even accessible in any convenient way.

19 It would, on the other hand, be
20 accessible to Mr. Freidin because he's talking about
21 his own client's initiatives:

22 With respect to 2(d) the question as
23 framed is extremely general and broad and I don't know
24 what the intended focus is here.

25 What should I tell my witnesses you are

1 going to be asking them about? This sounds like a
2 definition of everything.

3 MR. FREIDIN: I'm going to be exploring
4 particularly with the witnesses - I don't have my notes
5 on this one - but this panel overlaps a lot with Panel
6 No. 3 and, you know, involvement of members in timber
7 management and related activities. When we're talking
8 about related activities I'm talking about things such
9 as fire fighting, cone collection, involvement in
10 running nurseries, that sort of thing.

11 I mean, those things are touched on in
12 Panel No. 3 specifically, they are touched on generally
13 in Panel No. 2. I want to sort of deal with those
14 perhaps in a little -- get a little more information on
15 those particular matters.

16 MADAM CHAIR: So you're talking about
17 something beyond the employment level of 45 people that
18 we see in the evidence, you're talking about other
19 aspects of employment by Grand Council Treaty No. 3
20 members in other aspects of timber management?

21 MR. FREIDIN: Well, either employment or,
22 you know, involvement in one way or another in timber
23 management.

24 There is a message which comes through
25 very clear in the material, that the members of Grand

1 Council Treaty No. 3, the members, the individual
2 members do not have a significant involvement in either
3 timber management or related activities such as fire
4 fighting and that sort of thing.

5 I am not going to be getting into a big
6 dispute over the numbers, I just want to explore with
7 these witnesses and confirm as a matter of evidence for
8 the Board what activities they do in fact engage in.

9 MR. COLBORNE: That's my clarification
10 questions.

11 MADAM CHAIR: Anything the parties want
12 to ask Mr. Colborne about witness Panel 2?

13 MR. FREIDIN: How long?

14 MADAM CHAIR: How long will you be in
15 direct examination, Mr. Colborne?

16 MR. COLBORNE: One to two days.

17 MADAM CHAIR: Mr. Cassidy? This is Mr.
18 Cosman's panel.

19 MR. CASSIDY: I'm not in a position to
20 answer that question, Madam Chair. At this point I
21 would hazard a guess at less than a day, but that would
22 be only strictly a guess at this point.

23 MADAM CHAIR: Well, Mr. Cosman has been
24 dependable in the past, he rarely goes over a couple of
25 hours.

1 MR. CASSIDY: I guess the question is how
2 dependable is my guess then. I appreciate if you
3 didn't answer right now.

4 MADAM CHAIR: All right. Ms. Seaborn?

5 MS. SEABORN: Yes, Madam Chair. Ms.
6 Gillespie will be appearing on behalf of MOE for that
7 panel and Panel 3 as well.

8 MS. GILLESPIE: We don't anticipate being
9 more than two hours in cross-examination.

10 MADAM CHAIR: Thank you.

11 MADAM CHAIR: Mr. Freidin?

12 MR. FREIDIN: Three quarters of one day.
13 It's my new target.

14 MADAM CHAIR: Are we sitting four days
15 that week?

16 MR. FREIDIN: Yes. That is the week of
17 June the 3rd?

18 ---Discussion off the record

19 MADAM CHAIR: We will be finished Panel 2
20 that week and, again, we will accommodate evening hours
21 if it's necessary to do that, if that is agreeable to
22 your witnesses, Mr. Colborne.

23 MR. COLBORNE: That is going to be fine.

24 Panel 3 will be a little more
25 complicated.

1 MADAM CHAIR: Yes, all right. Well,
2 we're at Panel 3 now I think.

3 The question the Board has about witness
4 statement No. 3 has to do with a statement that is
5 found in the introduction of your Panel 5 evidence
6 where you say that evidence concerning what will be
7 done will be stated exclusively by the chiefs in their
8 Panel 3 evidence and by the elected leaders and elders
9 in their Panel 6 evidence.

10 Now, we have gone carefully through
11 witness statement No. 3 and we understand what's said
12 with respect to a description of what's going on in
13 these many individual communities.

14 With respect to this evidence being
15 prescriptive for the Board with respect to saying that
16 you would like to see certain changes in these
17 communities, we don't see that exactly. Are we led to
18 believe the evidence in a certain community is that
19 people don't have enough jobs in the forest industry,
20 for example. Is the Board supposed to see that as a
21 submission to this Board that something should be done
22 to increase employment?

23 MR. COLBORNE: As being a submission to
24 this Board that it should adopt the term or condition
25 proposed by Grand Council Treaty No. 3 and; that is,

1 require the proponent to negotiate in good faith on a
2 community by community basis access and allocation
3 questions but in a supervised way as opposed to simply
4 on the basis of a promise, because there have been many
5 promises and I think you'll be hearing about some of
6 them.

7 It is not intended, however, that there
8 is enough evidence in the witness statement or in what
9 you will hear from the chiefs themselves for you to
10 make any decision as to what ought to be done in any
11 particular community.

12 Just as I expect were the representatives
13 from a municipality here today, I doubt if they would
14 be saying we want you to hear all about the situation
15 at Red Lake, for instance, and we want you to impose a
16 particular scheme of things on the proponent as its
17 timber policy relates to the Municipality of Red Lake.

18 We're not saying that with respect to any
19 of the individual treaties or communities, but we want
20 to give you enough general information which we hope
21 will be exactly correct or at least sufficiently
22 correct that you'll appreciate the logic of the
23 proposed term and condition.

24 MADAM CHAIR: And a second question the
25 Board has with respect to witness statement No. 3, and

1 this touches actually on the point Mr. Freidin made a
2 little while ago, and is the Board to take from all of
3 this evidence of all the communities' experiences that
4 employment in MNR projects or jobs for MNR have
5 decreased in recent years and some of that is due to
6 contracting out?

7 MR. COLBORNE: To the first part of that,
8 the evidence seems to very, very strongly indicate
9 that, but we have not studied it to the extent that we
10 can put an expert on the stand who will say that as of
11 1960 or something here was the level of employment, but
12 as of 1980 the level of employment had declined to such
13 and such. We do not have that kind of evidence.

14 MADAM CHAIR: Thank you, Mr. Colborne.

15 MR. COLBORNE: We have only the evidence
16 that the chiefs will be able to give, but I think
17 you'll find that they are in a position to know what
18 has happened in their communities over the years, so
19 that you can attach a high level of reliability to it
20 and reach your own conclusions.

21 Another -- well, one of the most
22 important reasons why we don't have this non-existent
23 expert is that the data sources are non-existent. It's
24 really impossible to hire somebody who will go to
25 standard data sources and say here is the information

1 because the sources are not there.

2 The only way one would be able to get
3 this information really is to send a qualified person
4 from community to community to do extensive
5 interviewing and cross-checking and examination of
6 records that would back up what informants were telling
7 this expert and it would be an enormously expensive and
8 lengthy process, and all it would really reflect is the
9 equivalent of the combined wisdom of the communities
10 leaders who make up Panel 3.

11 That is why we are approaching it that
12 way. If it was a perfect world and we had unlimited
13 resources and lots of time we could also probably have
14 had an "expert", but we don't have that, no.

15 Now, there was a second part to your
16 question, I think, and that is the reference to
17 contracting out. I don't know.

18 will, when preparing the witnesses, ask
19 them to be prepared to give whatever evidence they have
20 on that question.

21 MR. CASSIDY: If I could ask a question
22 of clarification, Madam Chair. Do you have in mind
23 contracting out by the Ministry of work that had
24 previously been done by the Ministry?

25 MADAM CHAIR: Yes.

1 MR. CASSIDY: Contracting out to private
2 contracting companies?

3 MADAM CHAIR: Yes, various silvicultural
4 activities such as planting and nurseries.

5 MR. COLBORNE: That's what I had assumed
6 the question was.

7 MR. CASSIDY: I assumed too.

8 MADAM CHAIR: Do you have anything more
9 to ask the parties, Mr. Colborne?

10 MR. COLBORNE: Nothing for the Ministry
11 of Environment. For the OFIA, there's a question about
12 the history of native timber agreements in the Treaty 3
13 area; that is, 2(b), and I just wanted to point out the
14 same matters that I referred to Mr. Freidin and, that
15 is, these witnesses in Panel 3 and similarly Panel 2
16 have only anecdotal evidence on that topic and if
17 you -- so simply bear that in mind.

18 I will ask them to be there with whatever
19 information they have, but if the subject of timber
20 agreements in past decades is relevant, you should be
21 prepared, I think, to deal with it in reply evidence,
22 because I simply don't have --

23 MR. CASSIDY: That is fine, Madam Chair.
24 I will deal with that in the course of the
25 cross-examination as Mr. Colborne suggests, possibly in

1 our reply if necessary.

2 Just one clarification then. I don't
3 think I'm talking about ancient history, I'm probably
4 only talking the last 20 years, but I appreciate his
5 comments and we will bear that in mind in our
6 cross-examination.

7 I do, however, intend to raise that issue
8 and I will bear that in mind.

9 MR. COLBORNE: That is fine. My
10 witnesses may be quite responsive, but just so there's
11 no misunderstanding, I'm not painting these witnesses
12 as being experts on that, and I have not intended to
13 include evidence on that in the witness statements.

14 And, again, because it's generally pretty
15 hard to assemble, it hasn't been put together in a
16 convenient form by anyone that I'm aware of.

17 MR. CASSIDY: Thank you.

18 MR. COLBORNE: That is it.

19 MADAM CHAIR: All right, Mr. Colborne.
20 Any questions for Mr. Colborne?

21 Mr. Freidin?

22 MR. FREIDIN: How long?

23 MADAM CHAIR: You are a real stickler for
24 time, Mr. Freidin.

25 MR. FREIDIN: How many witness on this

1 panel, Mr. Colborne?

2 MR. COLBORNE: I think what I'm going to
3 do with this panel, with the permission of the Board,
4 is do it in three batches. If I say panels, you are
5 going to say it's three panels.

6 There are three regions or districts, one
7 is commonly referred to as the Kenora District, which
8 is basically the Lake of the Woods area; another is
9 commonly referred to as the Dryden District, which is
10 basically the Wabigoon/English River drainage basin
11 area; an another commonly referred to as the Fort
12 Frances District, which is basically the Rainy Lake
13 drainage basin, and my clients organization is divided
14 in those three groups.

15 And also the territory is somewhat
16 different. You have purely boreal forest in the first
17 of those territories, you have more mixed woodland in
18 the third, that is the Fort Frances, and you have a
19 very extremely mixed territory at Lake of the Woods
20 which is almost, part of it, an extension of the
21 prairies and part of it is boreal forest and so it's a
22 very mixed area.

23 So what I have in mind is to break this
24 panel into three and put on three successive days the
25 chiefs or representatives from each of those so, in

1 other words, one day would be the Dryden area - and if
2 you permit this - with the cross-examination of those
3 witnesses on that day we may even finish them; the next
4 the Kenora area; and the third the Fort Frances area,
5 so a grand total of three days but those three days
6 might possibly include the cross-examination in each
7 case, but I don't know.

8 MADAM CHAIR: And this is the plan for
9 Kenora, or this is planned for each of these locations?

10 MR. COLBORNE: Oh, no. Maybe I'm not
11 being clear. I was just talking about the areas that
12 they come from, but we are talking about the hearings--

13 MADAM CHAIR: Where they will appear?

14 MR. COLBORNE: -hearings at Kenora moving
15 to Fort Frances and whenever they move they move, fine.

16 MADAM CHAIR: We are starting this June
17 the 3rd?

18 MR. FREIDIN: June the 12th.

19 ---Discussion off the record.

20 MADAM CHAIR: And so we would start Panel
21 3 in Fort Frances on the 12th of June?

22 MR. COLBORNE: That's fine.

23 MADAM CHAIR: That is the way it's
24 scheduled, and then the week of the 17th -- all right.

25 MS. SEABORN: I didn't think that Panel 2

1 was going to take the whole week of June the 3rd. Were
2 you intending on breaking early that week or continuing
3 into Panel 3?

4 MADAM CHAIR: If possible we would like
5 to start Panel 3 in Kenora, but we are leaving -- we
6 will be finished at noon on Thursday, June the 6th.

7 MR. PASCOE: We will be in Fort Frances.

8 MADAM CHAIR: I mean, Fort Frances, which
9 gives us three and a half days left. Would your
10 witnesses be prepared to start on the 5th if we got
11 Panel 2 done?

12 MR. COLBORNE: Absolutely.

13 MADAM CHAIR: Earlier than it looks?

14 MR. COLBORNE: Yes.

15 MADAM CHAIR: Well, let's see how long
16 we think we will be in cross-examination, Mr. Colborne.

17 I don't know if the one day to do each
18 group will be enough or not.

19 Ms. Gillespie, do you know how long
20 you'll be in cross-examination of Panel 3?

21 MS. GILLESPIE: I don't think it will be
22 any longer than two hours for Panel 3, Madam Chair.

23 MADAM CHAIR: Okay. Mr. Cassidy?

24 MR. CASSIDY: In total I would say one
25 and a half days.

1 MADAM CHAIR: Assuming a half day per
2 panel.

3 MR. CASSIDY: Assuming a half day per
4 panel.

5 MADAM CHAIR: Mr. Freidin?

6 MR. FREIDIN: I'm going to say
7 approximately three quarters of a day.

8 Now, I would ask if the Board is amenable
9 to Mr. Colborne's discussion, if it's not in the
10 witness statement, I think it would be helpful if he
11 would identify the communities which fall within each
12 of the groups and then indicate to us the order in
13 which he would be calling the chiefs of those various
14 groups.

15 And the reason I basically say
16 approximately a third to half a day on each, I'm saying
17 approximately because if most of the interrogatories
18 that we asked on this specific panel have not been
19 answered, if Mr. Colborne had to go back to the
20 individual bands because he said there were questions
21 of an economic nature or, you know, he had to get that
22 information from the bands.

23 So it will depend very much on whether
24 he's able to get the answers in time, and also
25 obviously the nature of those answers as to how long we

1 would be on cross-examination.

2 MADAM CHAIR: How long would you be in
3 direct examination, Mr. Colborne, for each group?

4 MR. COLBORNE: One half day.

5 MADAM CHAIR: Well, we won't finish
6 then -- each panel will be more than one day, so I
7 think we should schedule -- I guess we should schedule
8 your panels to be two days apiece, although if it
9 weren't inconvenient and they were sort of ready to
10 start on the second day a bit earlier, yes, it might
11 help.

12 How did you want to organize this? Did
13 you want to start with the Kenora group.

14 MR. COLBORNE: I think starting with the
15 Kenora group, yes.

16 MADAM CHAIR: Now, and then the Dryden?

17 MR. COLBORNE: Then the Dryden.

18 MADAM CHAIR: Then the Fort Frances. So
19 we are going to be listening to Panel 2 in Fort
20 Frances.

21 MR. COLBORNE: (nodding affirmatively)

22 MADAM CHAIR: So you want to bring --
23 okay.

24 MR. MARTEL: What if per chance we finish
25 Panel 2 on Wednesday of hearing your Fort Frances group

1 and on the Thursday morning, rather than bring people
2 in from Kenora and fly them back to Kenora the same
3 day --

4 MR. COLBORNE: That may be a sensible way
5 to do it.

6 MR. MARTEL: If we don't finish, then we
7 just carry over when we come back on the 12th, but if
8 we -- yes. Whereas the other way, if you bring them in
9 from Kenora from the Dryden area for half a day, it
10 seems to be a huge expenditure, movement of people for
11 merely a half a day.

12 MADAM CHAIR: Is it important in your
13 mind that all these people be together to hear all
14 their evidence, or it doesn't matter?

15 MR. COLBORNE: Well, it would be much
16 better if it was not broken up just because of the
17 numbers of people, that is all, but I know that we
18 can't control everything, so...

19 MADAM CHAIR: Well, the Board is going to
20 leave this in your hands. It looks to us like you're
21 going to need two days per panel.

22 MR. COLBORNE: Yes.

23 MADAM CHAIR: We are going to be sitting
24 those days, so however you want to work it, just inform
25 the Board.

1 MR. COLBORNE: Yes.

2 MADAM CHAIR: We will have two weeks in
3 Fort Frances and then we have scheduled the week of
4 June the 12th in Kenora.

5 MR. PASCOE: No, the first two weeks we
6 will be in Kenora and then the next four, if necessary,
7 will be in Fort Frances.

8 MADAM CHAIR: I think that is as far as
9 we can go with the scheduling right now, but it's going
10 to take longer than one day.

11 MR. COLBORNE: Yes.

12 MADAM CHAIR: Okay.

13 MS. SEABORN: As I understand it though,
14 Madam Chair, Mr. Colborne is content, whenever we
15 finish Panel 2, to move right into Panel 3 as I
16 understand what he said earlier.

17 MR. COLBORNE: Yes.

18 MADAM CHAIR: All right, thank you.

19 Is there anything else, Mr. Colborne?

20 MR. COLBORNE: No.

21 MADAM CHAIR: Then I expect we won't see
22 you until Kenora.

23 MR. COLBORNE: The 23rd.

24 MADAM CHAIR: Thank you very much.

25 MR. COLBORNE: Thank you.

1 MADAM CHAIR: And do we have a date set
2 for -- is it necessary to set a date for scoping
3 panels --

4 MR. PASCOE: We set May 28th to scope 4,
5 5 and 6 at four o'clock in Kenora.

6 MADAM CHAIR: May 28th in Kenora at four
7 o'clock.

8 MS. SEABORN: I think Mr. Pascoe has us
9 scoped right through to 1992.

10 MADAM CHAIR: All right. Thank you.

11 Shall we move on now to the proposal on
12 negotiations of proposed terms and conditions. Are you
13 going to speak to that, Mr. Freidin?

14 MR. FREIDIN: Only to say that it should
15 be referred to not as MNR's proposal, but the parties'
16 proposal. There was extensive meetings, discussions,
17 telephone conversations and drafting of this document
18 and all parties agree to it, so subject to any
19 questions that the Board may have, I don't think I need
20 say anything more.

21 MADAM CHAIR: Well, maybe we could go
22 through very quickly and just ask you a few questions
23 that the Board wants an answer on.

24 Isn't advisor the same thing as mediator?

25 MR. FREIDIN: I'm not too sure. We went

1 around the table, as I understand it, talked about
2 facilitator, mediator, arbitrator, advisor, and I think
3 we chose the word advisor because we felt that the
4 person should be someone who can sort of organize the
5 meetings, can provide advice as to how those
6 negotiations would best be undertaken to structure some
7 of the negotiations.

8 MR. MARTEL: Who pushes though? My
9 concern is with any sort of mediation who is going to
10 be do the pushing, the advisor? I mean, if push comes
11 to shove, we are hoping something will be very
12 successful out of this and I want to know who is going
13 to be prompting and controlling and kicking, if need
14 be.

15 MR. FREIDIN: Well, hopefully we won't
16 get into pushing and kicking, but the advisor -- I
17 think the way it's been set up is that the advisor, as
18 you'll see, is going to be apprised of the views and
19 the positions of all the parties and the advisor is
20 going to speak to the various parties and obviously is
21 going to come to his own view as to where his time is
22 going to be best spent, and the advisor will be
23 attempting to facilitate agreement between the parties.

24 Now, obviously I guess if somebody's
25 going to push or shove it's going to be the advisor, to

1 the extent that the advisor feels that that's
2 appropriate.

3 MR. MARTEL: I just want to know if
4 that's his role. I mean, it's just --

5 MR. CASSIDY: Well, I do have a comment
6 to make in that respect, Mr. Martel, and that is, I
7 believe it is generally agreed among the parties who I
8 can tell you spent a significant amount of time
9 discussing this proposal, that this is not a
10 negotiation akin to a labour mediation --

11 MADAM CHAIR: Excuse me, Mr. Cassidy. I
12 don't like to interrupt you, but we can't go on. We
13 need a five-minute break, okay?

14 MR. CASSIDY: Certainly.

15 MADAM CHAIR: Sorry to cut you off in
16 mid-sentence.

17 MR. CASSIDY: That's all right.

18 MADAM CHAIR: We'll be back in five
19 minutes.

20 ---Recess at 5:35 p.m.

21 ---on resuming at 5:40 p.m.

22 MR. FREIDIN: If I might just add to your
23 question, Mr. Martel. Again, I think that, as
24 indicated in the proposal, because none of us are.
25 Experts in this sort of large negotiation and we are

1 hopeful that the person who is going to be the advisor
2 is -- the word advisor is a bit more neutral than the
3 other ones, and we were going to ask for the assistance
4 of this expert person to, if necessary, define his role
5 perhaps more precisely in consultation with the
6 parties. So advisor was as neutral as we could get and
7 hope that assists you.

8 MADAM CHAIR: Mr. Cassidy?

9 MR. CASSIDY: All I can do is simply
10 repeat what I said earlier, that I believe it is the
11 general belief of the parties who were engaged in this
12 discussion on setting out this negotiation proposal,
13 certainly it is the view of my client that we do not
14 view this as a labor negotiation, a labour mediation in
15 the traditional sense.

16 Bearing that in mind, we did agree that
17 there was an advisor that would be needed to assist in
18 the course of discussions of what may arise between the
19 parties.

20 MADAM CHAIR: The next question the Board
21 has about this proposal is, we are curious about the
22 category (e), no position, no comment category. What
23 What does that pick up?

24 MS. SEABORN: Madam Chair, if I could
25 probably respond to that question initially and Mr.

1 Freidin could and Mr. Cassidy could add.

2 In discussing this proposal amongst
3 ourselves, it was suggested that in some cases when
4 we're commenting on each other's terms and conditions
5 our clients may not take a position one way or the
6 other and that should be reflected in the analysis, or
7 we may not make any comment, and at the end of the day,
8 on behalf of the Ministry of the Environment, there may
9 be certain issues where we will remain silent on, we
10 will not comment on the evidence in final argument, we
11 won't call any evidence on those topics, and if there
12 are other parties' terms and conditions we, as the
13 Ministry of the Environment, take no position then that
14 should be identified in the analysis at the outset of
15 the negotiation proposal.

16 It also is an attempt to look at the
17 number of parties that may be involved in negotiating
18 particular issues. It may be that for some of the
19 smaller parties there are a number of issues or terms
20 and conditions they just aren't interested in being
21 involved in those portion of the negotiations, and it
22 was felt by all the parties involved in this proposal
23 it may assist the advisor in looking at where are the
24 issues that all the parties have an interest in
25 participating in in the negotiation.

1 MADAM CHAIR: So the Board is to
2 understand in category (e) those are where parties
3 haven't put forth terms and conditions on those issues?

4 MS. SEABORN: Yes, they may not have put
5 forward terms and conditions themselves or they may not
6 be taking a particular position on how another party
7 sees their terms and conditions.

8 MR. FREIDIN: I think an additional
9 reason for that, Madam Chairman, is that when this
10 advisor gets all of this material to look at it's
11 almost a sort of focussing or scoping mechanism for
12 that person, that if they see that there are only three
13 parties involved that are concerned about a certain
14 term and condition, then if he wants to call a meeting
15 or wants to discuss possible settlement of that, he
16 knows right away, five parties aren't interested in it,
17 they don't care one way or the other, I will spend my
18 time with those three.

19 MADAM CHAIR: And so when can the Board
20 expect to receive a final report?

21 MR. FREIDIN: Difficult -- I would give
22 you my best. I think if you look at the timetable
23 here, we're looking hopefully at the end of September.

24 The way we come up with that is, you see
25 the parties exchange their comments on each other's

1 terms and conditions by the end of June, I believe most
2 parties or their representatives were hoping to take
3 some time off in July, we are hoping to have whatever
4 negotiations are formal negotiations take place take
5 place in August, and for a report to be prepared by the
6 end of September.

7 Now, the actual advisor has not been
8 chosen, although it looks like there is an agreement --
9 a good chance we'll get agreement on this person - the
10 meeting's scheduled for next week where this one
11 individual is going to meet jointly with the parties.

12 Obviously the timetable of that
13 individual is not known at the moment, so that person's
14 timetable will have to be factored into all of this.
15 But assuming that we don't have any scheduling
16 problems, unforeseen scheduling problems, that is
17 generally the sort of timetable we're looking at.

18 MADAM CHAIR: All right. We received a
19 letter today from Mr. Hunter representing NAN and I
20 don't know if the other parties got a copy or not, but
21 his concern, which I guess doesn't apply to Mr.
22 Colborne because your case will be over before anything
23 coming out of this negotiation process would affect it,
24 but Mr. Hunter is saying he doesn't know how he's going
25 to put his case together and participate in

1 negotiations at the same time.

2 I think his hope was that he could take
3 less time in his case if it looked like the
4 negotiations would be fruitful. I don't know what
5 advice -- I don't think we can give him any advice and
6 I don't know what advice the other parties can give
7 him, but I guess I would certainly tell him to go ahead
8 and prepare his case, and then if it's not clear until
9 well into September what the results would be -- he'll
10 be starting early in September, so I guess he'll be
11 starting in any event. I don't think the Board can say
12 anything beyond that to him.

13 With respect to the OFAH and NOTOA, they
14 will have I guess a bit more room to develop their
15 cases with respect to the negotiations process, but I
16 think Mr. Hunter is the one that is caught in the
17 middle with respect to timing.

18 MR. FREIDIN: It would be a good exercise
19 to force him to put his mind to the issues prior to
20 coming to the --

21 MADAM CHAIR: Well, he might be spared
22 calling any evidence, but I don't think that is going
23 to be what happens.

24 ---Discussion off the record

25 MADAM CHAIR: Mr. Martel has a question,

1 Mr. Freidin, and that is with respect to the
2 sustainable forestry initiatives that are being
3 discussed at MNR or have been decided upon by the
4 Ministry.

5 Is it the intention to put any of that
6 material before the Board before the negotiations take
7 place?

8 MR. FREIDIN: It is not.

9 MR. MARTEL: I might ask a question then.
10 How can you negotiate terms and conditions on material
11 that hasn't been even presented to the Board. I'm not
12 a lawyer but that material isn't even up for
13 consideration, so how can you be negotiating it when is
14 not on the table?

15 MR. FREIDIN: I think I -- if you turn to
16 page 4 of the proposal in terms of -- which outlines
17 the terms of reference, it indicates that the final
18 terms and conditions and approval may include
19 provisions for longer term timber management goals with
20 reporting requirements, may also include methods for
21 amending specific terms and conditions during the life
22 of the Class EA.

23 You also see in this document that there
24 is a provision that although some people may agree in
25 concept with a particular proposal, that a party may

1 not be able to agree fully with it because they can't
2 agree with the details.

3 An example might be that there may be
4 agreement to landscape management as a concept but
5 there can't be agreement with the specific proposal by
6 a party in terms of the details; i.e., the specifics of
7 it, the timing of it and that sort of thing.

8 So to the extent that we're dealing with
9 something which is new and developing as we go along in
10 terms of new initiatives, where any party, I would
11 assume, raises in its terms and conditions something
12 which is now related or is going to be part of one of
13 these new initiatives, the Ministry will be in a
14 position obviously of having to listen to the desires
15 of that party and doing its best in terms of committing
16 to a concept, if that is the case, and hopefully
17 agreeing on timing and that sort of thing.

18 MR. MARTEL: Mr. Freidin, but that's not
19 material that is before us. You're considering terms
20 and conditions --

21 MR. FREIDIN: No.

22 MR. CASSIDY: Mr. Martel, in the course
23 of negotiations the parties can discuss issues in
24 confidence among themselves. And if I can refer you to
25 the negotiation structure, that issue is contemplated,

1 the very issue you discuss was contemplated by the
2 parties, because my client - and I'm going to read a
3 statement in a few minutes that reflects that - my
4 client was very concerned, as are most of the other
5 parties, about how those sustainable forestry proposals
6 are reflected are going to be reflected in what the
7 Ministry is -- its position is and that is going to be
8 discussed in the negotiations and you'll see that right
9 in the analysis, it's very clearly stated.

10 MR. MARTEL: I see what it says, Mr.
11 Cassidy. I mean, I know what it says.

12 What worries me is that you could dream
13 up new conditions -- not conditions, or material from
14 left field if you want and present them in negotiations
15 on material that isn't even before the Board. You can
16 do anything you want.

17 MR. CASSIDY: We're very concerned about
18 that, sir, and that's what is going to be discussed in
19 the negotiation session.

20 MS. SEABORN: I think, Mr. Martel, as
21 well there is an issue about the extent to which other
22 intervenors' terms and conditions may be covered by the
23 sustainable forestry initiatives.

24 So when you say how are you going to
25 negotiate issues that aren't in front of us, on a

1 number of issues some parties will take the position
2 that those very issues are in front of you through
3 their terms and conditions and that they have called a
4 case or will be calling a case to support their terms
5 and conditions.

6 And so I don't think it's quite correct
7 to say that the sustainable forestry issue initiatives
8 aren't in front of us. There are some parties who
9 would argue that their terms and conditions do
10 encompass a number of the sustainable forestry
11 initiatives and that is why, certainly, this is all a
12 topic that is going to be debated at the negotiations,
13 and it's one of the reasons why the approach is
14 structured in such a way that MNR will be providing all
15 of the intervenors with their position first and then
16 the intervenors will be responding by commenting on
17 other parties' terms and conditions in order to ensure
18 that we go into the negotiations talking about the same
19 issues.

20 MR. CASSIDY: And what we hear you
21 saying, Mr. Martel, is that it may be very difficult to
22 achieve this negotiation result in light of that, and I
23 can tell you we wholeheartedly agree with you.

24 MR. MARTEL: Then can I ask the follow-up
25 question:

1 Why wouldn't you put the material before
2 the panel, before the Board which would throw the
3 negotiations hopefully in a more positive light in
4 achieving a successful solution.

5 I mean, I just find it difficult that
6 negotiations are going on with respect to material --
7 you might say, well, it's there in some form, but it's
8 not very tangible if it's new and -- I mean, that
9 seems to me to be a real roadblock to positive
10 negotiations, to leave something that is smoke in
11 mirrors at this stage of the game.

12 That is only my opinion and I am not a
13 negotiator, but I tell you - and my colleague and I are
14 listening to information every day while some
15 background -- some material is being altered from what
16 it was originally, I don't know what it is.

17 MADAM CHAIR: I think the related point
18 of Mr. Martel's concern is that at the end of the day
19 if the Board is given terms and conditions that all the
20 parties are in agreement they would like to see
21 approved and the Board has to look very hard to see
22 where any evidence it heard is related to those
23 specific terms and conditions, it's going to be in a
24 tough position with respect to approving them.

25 But we take notice of Ms. Seaborn's

1 comments that there are parties who believe in some way
2 the evidence they've presented in their cases, or will
3 present to the Board are related to what MNR's
4 sustainable forestry initiatives are at this point.

5 MR. CASSIDY: Well, I would like to read
6 a statement on behalf of the OFIA, Madam Chair, because
7 I think it speaks directly to a lot of what Mr.
8 Martel's concerns are with respect to the negotiation
9 proposal presented.

10 The OFIA is prepared to participate in
11 the negotiations to the extent of
12 analysing the terms and conditions of the
13 other parties to determine if there is
14 room for further negotiations as
15 contemplated in this proposal.

16 Our client does so in the hope that
17 this effort will assist in the
18 identification and resolution of issues
19 in this hearing.

20 We, like the other parties, and I
21 believe you Mr. Martel, are waiting to
22 see how this sustainable forestry
23 proposals made by the MNR are going to
24 affect the Ministry's draft terms and
25 conditions and, therefore, the

1 negotiation process.

2 We share the concerns of the Board
3 and the other parties that these
4 proposals may influence this process.

5 Again, the OFIA will undertake these
6 negotiations in good faith and we trust
7 that all other parties will approach this
8 effort in the same manner.

9 MADAM CHAIR: Is there anything else the
10 parties --

11 MR. MARTEL: Unless the MNR wants to
12 reconsider their position.

13 My only concern, I'm quite candid, is
14 going into it that way I think could hinder it, hinder
15 positive negotiations. I just worry about that, okay,
16 and I haven't talked to anyone, but obviously I was on
17 the same wave length as other parties, and hopefully it
18 won't lead to what I fear, but I express my concerns
19 now.

20 MADAM CHAIR: I think this session is
21 over.

22 Thank you, and we will be back tomorrow
23 morning to hear from the Foresters Association.

24 MR. FREIDIN: Madam Chair, can the
25 parties assume that we should proceed along these

1 lines?

2 MADAM CHAIR: Absolutely.

3 MR. FREIDIN: Thank you.

4
5 ---Whereupon the hearing was adjourned at 6:00 p.m.,
6 to be reconvened on Wednesday, May 1st, 1991,
7 commencing at 9:00 a.m.

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